SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 575.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ET AL., PLAINTIFFS IN ERROR,

vs.

J. I. WOOD, COUNTY TREASURER OF PITTSBURG COUNTY, OKLAHOMA, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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POOR

1 The Supreme Court of the United States, October Term, 1910.

In Equity.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Citation.

The President of the United States to J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James County Treasurer of Bryan County, Oklahoma, and A. J. Stein, County Treasurer of Choctaw County, Oklahoma:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington D. C. within 30 days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma wherein Michael H. Gleason, Minnie Love, Henry McGee, Isadore James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, are plaintiffs in error, and you, J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of

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Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma; are defendants in error, to show cause, if any there be, why the judgment against the plaintiffs, as in said writ of eror mentioned, should not be corrected and why justice should not be done to parties in that behalf.

Witness, the Honorable Edwin D. White, Chief Justice of
2 the Supreme Court of the United States, this 6th day of April, 1911.

[Seal Supreme Court, State of Oklahoma.]

JOHN B. TURNER,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:
W. H. L. CAMPBELL,
Clerk, Supreme Court of the State of Oklahoma,
By JESSIE PARDOE, *Deputy.*

We, the undersigned attorneys of record for J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Tre-surer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma; in the above cause, hereby accept service of the foregoing citation and acknowledge receipt of a copy thereof this sixth day of April, 1911.

CHAS. WEST,
Attorney General of Oklahoma;
CHAS. L. MOORE,
Ass't Attorney General of Oklahoma,
Attorneys of Record for Defendants in Error.

3 [Endorsed:] #1877. Citation. Filed Apr. 6, 1911. W. H. L. Campbell, Clerk.

POOR

4 The Supreme Court of the United States, October Term, 1910.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Writ of Error.

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court before you, or some of you, between Michael H. Gleason, Minnie Love, Henry McGee, Isadore James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, plaintiffs in error, and J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma; defendants in error, Your Court being the highest court in State having jurisdiction to render judgment in the case, there was drawn in question the construction of paragraph 16 of Section 29 of an Act of Congress approved June 28th, 1898, (30 Stat. 505) and the decision was against the right, immunity and privilege especially set out and claimed by said above named plaintiffs in error under the said paragraph 16 of said Section 29 of the said Act of Congress approved June 28th, 1898 as aforesaid, there being also drawn in question in said cause the validity of the first clause of Section 4 of an Act of Congress approved May 27th, 1908, (35 Stat. 312) the decision of which was against the contentions and the rights, privileges and immunities of plaintiffs in

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error, and there being manifest errors in said decision greatly to the damage of the said above named plaintiffs in error, we being willing that if there is error it should be duly corrected, we do therefore, command you, if judgment be therein given that under the seal of your court, you send the record and proceedin-s had in said cause to the Supreme Court of the United States together with this writ so that you have the same at Washington on the Sixth day of May, 1911, in the Supreme Court of the United States to be then and there held that the record may be inspected by the Supreme Court and justice done.

5 Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 6th day of April 1911.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,
Clerk of the Circuit Court of the United States for the Western District of Oklahoma.

Allowed, on giving bond as required by law in the sum of one thousand Dollars, by,

JOHN B. TURNER.
Chief Justice of the Supreme Court of Oklahoma.

Return.

UNITED STATES OF AMERICA,
State of Oklahoma, ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the above cause, with all things concerning the same.

In witness whereof I hereby subscribe by name and affix the seal of the said Court, at office in City of Oklahoma, this 8" day of April 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court, State of Oklahoma.
By JESSIE PARDOE, *Deputy.*

6 [Endorsed:] #1877. Writ of Error. Filed Apr. 8. 1911. W. H. Campbell, Clerk.

7 The Supreme Court of the United States, October Term, 1911.

In Equity.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McMEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Patrick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Petition for Writ of Error.

To the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the Associate Justices of said Court:

Now comes the above and hereinafter named plaintiffs in error in the above cause, and would show unto the Honorable Court that in the record and proceedings and rendition of decree in the above cause by the Supreme Court of the State of Oklahoma, it being the highest court of said state, and court of last resort, in which a decision could be had on the said suit between Michael H. Gleason, Minnie Love, Henry McMee, Isadore James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error, and J. I. Wood, County Treasurer of Pittsburg County, M. P. Rainey, County Treasurer of Hughes County, Henry J. Bond, County Treasurer of Atoka County, Patrick Greenan, County Treasurer of Coal County, John C. Evans, County Treasurer of Latimer County, John H. Hinton, County Treasurer of Leflore County, J. E. McBrayer, County Treasurer of Haskell County, Joe B. Thurston, County Treasurer of McCurtain County, J. W. Amend, County Treasurer of Pushmataha County, E. P. James, County Treasurer of Bryan County, A. J. Stein, County Treasurer of Choctaw County, Defendants in Error, manifest error has occurred greatly to their damage whereby petitioners feel aggrieved.

That in the record and proceedings it will appear that there was drawn in question the construction of paragraph — of Section 29 of An Act of Congress approved June 28th, 1898 (30 Stat. 505), en-

titled, An Act for the protection of the people of the Indian
8 Territory, and *and* for other purposes, and the decision was against the rights and privileges especially set up and claimed by Plaintiffs in error under said section; that said above named Plaintiffs in Error and each of them claimed and asserted in the said proceedings that by virtue of the said Paragraph, of said Section 29, of said Act of Congress, approved June 28th, 1898 that their and each of their allotments received by them from the tribal estate of the Choctaw Tribe of Indians under and by virtue of the said Act of Congress as fully set forth in the record of said proceedings, were exempt from taxation so long as the title thereof remained in them the original allottees thereto not exceeding however, a period of 21 years from the dates of the deeds therefor which said period has not yet expired all as shown in the record of the proceedings in the said cause.

That above named plaintiffs in error did in the said proceedings deny the validity of the first clause of Section 4 of the Act of Congress approved May 27th, 1908 (35 Stat. 312) entitled, an Act for the removal of the restrictions from a part of the lands of the allottees of the Five Civilized Tribes, and for other purposes, in so far as the said provisions attempted or attempts to violate the exemption privilege and right guaranteed to them and each of them under the said Paragraph 16 of the said Section 29 of the said Act of Congress approved June 28th, 1898 above referred to, if said clause of said Section 4 was so intended, and denied that the said clause of the said Section 4 of the said Act of 1908 was intended to so violate their and each of their exemption rights; and that the decision in the above cause was also against their and each of their contentions in that regard, all of which is fully apparent in the record and proceedings in the cause and specifically set forth in the assignment of error filed herewith.

Wherefore petitioners pray that their appeal be allowed and that the transcript of the record, proceedings and papers upon which said orders were made and judgment and decree rendered, duly authenticated be ordered sent to the Supreme Court of the United States at Washington, D. C. under the rules of the said Court in such cases made and provided, that the same may be inspected and corrected as according to law and justice should be done.

W. L. STURDEVANT,
D. C. McCURTAIN,
EDWARD P. HILL,
Solicitors for Plaintiffs in Error.

Filed April 6, 1911.
W. H. L. CAMPBELL, *Clerk.*

9 The Supreme Court of the United States, October Term, 1910.

In Equity.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Assignment of Error.

Come now, the above and also hereinafter named plaintiffs in error and aver and show that in the record and proceedings in said cause the Supreme Court of the State of Oklahoma, erred to the great damage and wrong of the plaintiffs in error herein, and to the prejudice and against the rights of the plaintiffs in error, such error being as follows to-wit:

First. The said Supreme Court erred in deciding that paragraph 16 of Section 29 of an Act of Congress approved June 28th, 1898, (30 Stat. 505) entitled, "An Act for the protection of the people of the Indian Territory, and for other purposes," commonly known as the Atoka Agreement, does not vest in plaintiff in error a valuable property right, to-wit; the exemption of their allotments from taxation while the title remains in them and each of them the original allottees thereof, not, however, exceeding 21 years from the dates of the patents of said allotments received by them respectively, each of the said plaintiffs in error having received an allotment from the tribal estate of the Choctaw Tribe of Indians under and by virtue of the provision of the said Act of Congress of June 28th, 1898, as aforesaid, as *as* specifically appears in the record and proceedings had in the said Supreme Court of Oklahoma.

Second. The said Supreme Court erred in deciding that the exemption right and privileges granted to plaintiff in error and each of them by said paragraph 16 of said Section 29 of said Act of Congress does not constitute a contract resting upon a valuable consideration, which cannot be impaired or violated by an Act of Legislation enacted either by Congress or the Legislature of Oklahoma.

Third. The said Supreme Court erred in holding and deciding that said paragraph 16 in said Section 29 of the said Act of 1898 does not vest in plaintiffs in error and each of them, an absolute

and unconditional property right, and constitute a contract and grant in their, and each of their, favor, which is protected by Section 10 of Article 1 of the Constitution of the United States, and which is likewise protected by amendments 5 and 14 of the Constitution; and further erred in deciding that such exemption rights privileges and immunities, as were conferred in the Act aforesaid, were mere gratuities resting upon no consideration and subject to be withdrawn by the legislature, notwithstanding they and each of them are citizens of the United States, who hold a fee-simple title to their said allotments.

Fourth. The said Supreme Court erred in deciding that the first clause of Section 4 of an Act of Congress, approved May 27, 1908, (35 Stat. 312) was intended by Congress to subject the lands in controversy herein to taxation, and erred in failing to decide that the land in controversy, and the class of lands to which they belong, should not be exempt from the operation of that statute, and erred in failing to decide that the application of the Statute should not be limited to lands on which the statute could operate without affecting the class of lands in controversy, and the vested rights of these owners thereof.

Fifth. The said Supreme Court erred in deciding that the said Section 4 of the Act of May 27th, 1908, if intended to apply to this class of lands in controversy, was a valid exercise of legislative power.

Sixth. Said Supreme Court erred in deciding that the said Section 4 of said last mentioned Act, was intended to apply to the allotments of plaintiffs in error, and lands of that class, and in deciding that the said Act in that regard is constitutional; and erred in deciding that the said Section 4 is a valid law, and that the said allotments of Plaintiffs in error and each of them are subject to taxation by virtue thereof in violation of their exemption rights therein as aforesaid.

Seventh. Said Supreme Court erred in denying to plaintiffs in error and each of them the rights, privileges and im-unities granted to them and each of them by said paragraph 16 of said Section 29 of the said Act of Congress of June 28th, 1898, (30 Stat. 505) against their and their several contentions that said rights should be protected; and erred in sustaining the trial court, in which it sustained a demurrer to their petition and rendered judgment against them depriving them of the rights, privileges and immunities, and adjudged them to pay the costs of the action, and further erred in not reversing the said trial Court and deciding the issue in favor of the plaintiffs in error.

Wherefore, by these and other manifest errors appearing in the record, the said plaintiffs in error and each of them, pray that the judgment of the said Supreme Court of the State of Oklahoma be reversed, set aside and for naught held, and that a judgment and decree be rendered in favor of plaintiffs in error granting them and each of them the rights, immunities and propection claimed by them and each of them under the said statute and the laws of the United States, and also prays judgment of their costs.

W. L. STURDEVANT,
D. C. McCURTAIN,
EDWARD P. HILL,
Solicitors for Plaintiffs in Error.

11 [Endorsed:] #1877. Assignment of Error. Filed Apr. 6, 1911. W. H. L. Campbell, Clerk.

12 In the Supreme Court of the State of Oklahoma.

In Equity.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Order of Allowance.

On this 6th day of April, 1911, came on to be heard the application of Michael H. Gleason, Minnie Love, Henry McGee, Isadore James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, plaintiffs in error, said plaintiffs in error being present by counsel, for a writ of error, and it appearing to the court from the petition filed herein, and the records in the cause that the application ought to be granted and that a transcript of the record and proceedings and papers on which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings may be had as will be just in the premises.

It is therefore ordered that the writ of error be allowed upon the plaintiff giving bond, conditioned as the law directs, in the sum of One Thousand Dollars, which may operate as a supersedeas, and that a true copy of the record, assignment of errors, and all proceedings had in the case in the Supreme Court of the State of Oklahoma shall be transmitted to the Supreme Court of the United States, properly certified as the law directs, that the said court may inspect the same and do, what according to law should be done.

JOHN B. TURNER,
Chief Justice of the Supreme Court of Oklahoma.

Attest:
W. H. L. CAMPBELL,
Clerk Supreme Court,
By JESSIE PARDOE, *Deputy.*

Filed April 6, 1911.
[SEAL.] W. H. L. CAMPBELL, *Clerk.*

13 In the Supreme Court of the State of Oklahoma.

In Equity.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma, Defendants in Error.

Bond.

Know all men by these presents, that we, Michael Gleason, as principle and Southern Surety Co. a corporation as surety, are held and firmly bound unto J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County treasurer *County Treasurer* of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma; above named, in the sum of One Thousand Dollars to be paid to the said J. I. Wood, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Patrick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treas-

urer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma; A. J. Stein, County Treasurer of Choctaw County, Oklahoma; their executors, assigns and administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally and our and each of our executors, administrators and assigns firmly by these presents.

Sealed with our seals and dated this 6th day of April, 1911.

Whereas, the above named plaintiffs in error have sued out a writ of error to the Supreme Court of the United States to reverse the judgment and decree in the above entitled cause by the Supreme Court of the said State of Oklahoma.

14 Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute said writ of error to effect and answer all costs, if they fail to make good their plea, then this obligation will be void; otherwise to remain in full force and virtue.

[SEAL.] MICHAEL GLEASON, *Principal.*
SOUTHERN SURETY CO., *Surety.*
By F. A. UNGLES, *Ass't Sec'y.*

Approved April 6, 1911.
JOHN B. TURNER,
Chief Justice.

Filed April 6, 1911.
W. H. L. CAMPBELL, *Clerk.*

[Endorsed:] Bond. Copy. Bond. 3 copies.

15 In the Supreme Court of the State of Oklahoma.

No. 1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al., Defendants in Error.

(Filed 20th Day of July, 1910.)

W. H. L. Campbell, Clerk.

The said Michael H. Gleason, and others, plaintiffs in error, complain of said defendants, J. I. Wood, et al., for that the said J. I. Wood, County Treasurer of Pittsburg County, and others, on the 9th day of July, 1910, in the Superior Court of Pittsburg County, State

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of Oklahoma, recovered a judgment by the consideration of said court against the said Michael H. Gleason, et al., in a certain action then pending in said court wherein the said Michael H. Gleason, et al., were plaintiffs and the said J. I. Wood, as County Treasurer of Pittsburg County, et al., were defendants. The original casemade of said case duly certified and attested is hereunto attached, marked "Exhibit A," and made a part of this petition in error, and the said Michael H. Gleason, et al., aver that there is error in the said record and proceedings in this:

1. Said court erred in holding that the plaintiffs by their petition had not stated facts sufficient to constitute a cause of action against the defendants.

2. The court erred in holding that the demurrer of the defendants was well taken and should be sustained.

3. The court erred in sustaining the demurrer of the defendants, J. I. Wood, et al., to the petition of the plaintiffs, Michael H. Gleason, et al.

4. The court erred in dismissing the petition of the plaintiffs, Michael H. Gleason, et al.

16 5. The court erred in rendering judgment for the defendants, J. I. Wood, et al., against the plaintiffs, Michael H. Gleason, et al., for their costs in said suit.

6. The court erred in refusing to render judgment in favor of the plaintiffs, Michael H. Gleason, et al., and against the defendants, J. I. Wood, et al., upon the pleadings.

7. The court erred in refusing to overrule the demurrer of the defendants, J. I. Wood, et al., and require them to answer the petition of the plaintiffs in error.

Wherefore, the plaintiffs in error pray that, said judgment may be reversed, set aside, and held for naught and that a judgment may be rendered herein in favor of the plaintiffs in error and against the defendants in error upon the pleadings directing that a decree be entered finding the issues in favor of the plaintiffs awarding to them the relief prayed for in their said petition.

MICHAEL H. GLEASON ET AL.,
Plaintiffs in Error,
By McCURTAIN & HILL,
Attorneys for Plaintiffs in Error.

17 "EXHIBIT A."

STATE OF OKLAHOMA,.
County of Pittsburg, ss:

In the Superior Court in and for said County and State.

Number 262.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, et al., Defendants.

Casemade.

Be it remembered: That heretofore, to-wit, on the — day of ——, 19—, the above named plaintiff, Michael H. Gleason, instituted a suit against the said defendant, J. I. Wood, as County Treasurer of Pittsburg County, Oklahoma, in the above named court sitting at McAlester, by filing in the office of the Clerk of said Superior Court a petition; and

Be it further remembered: That thereafter, to-wit, on the 24th day of June, 1910, the plaintiff, Michael H. Gleason, filed a motion in said above named court to set aside the judgment theretofore rendered in said cause on the 21st day of May, 1910, and also asking leave of the Court to file and amended petition in this case, so as to show additional parties plaintiff and defendant, which said motion and amended petition, with all the endorsements thereon, are in words and figures as follows; to-wit:

18 STATE OF OKLAHOMA,
County of Pittsburg, ss:

In the Superior Court.

No. 262.

MICHAEL H. GLEASON, Plaintiff,
v.
J. I. WOOD, County Treasurer of Pittsburg County, Defendant.

Motion.

Comes now Michael H. Gleason, plaintiff in the above entitled cause, and moves this honorable court to set aside the judgment heretofore rendered in said cause on the thirty-first day of May, 1910, wherein the demurrer of the defendant, J. I. Wood, to the petition of the plaintiff was sustained, and would state in support of said motion that heretofore, to-wit, June 3, 1910, it was agreed between the

plaintiff, represented by McCurtain & Hill, and the defendant, represented by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment in this case should be set aside and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

Plaintiff would also ask leave of the court to file amended petition in this case, so as to show additional parties plaintiff.

McCURTAIN & HILL,
Attorneys for Plaintiff.

Filed in Open Court. Tal Millwee, Clerk Superior Court. June 24, 1910. By W. J. Kendrick, Deputy Clerk.

19 That on the 24th day of June, 1910, the above motion was sustained and it was ordered that the judgment heretofore rendered in this case be set aside and that plaintiff be allowed to file amended petition in this cause, so as to show additional parties plaintiff.

No. 262.

MICHAEL H. GLEASON et al., Plaintiff,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, et al., Defendants.

20 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court in and for said County and State.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, et al., Defendants.

Amended Petition.

Now comes the plaintiff in the above entitled cause and by leave of the court first had and obtained amends the original petition filed herein on the — day of ——, 1909, so as to make the same hereafter read as follows:

Now comes Michael H. Gleason, a resident of Pittsburg County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in Pittsburg County, Oklahoma, similarly situated; also comes Minnie Love, a resident of Bryan County, Oklahoma, one of the plaintiffs herein, for herself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said Bryan County, Oklahoma, similarly situated; also comes Henry McGee, a resident of Hughes County, Oklahoma, one of the plaintiffs herein, for him-

self and for and in behalf of all other members of the Choctaw tribe of Indians resident in said Hughes County, Oklahoma, similarly situated; also comes Isadore James, a resident of LeFlore
21 County, Oklahoma, one of the plaintiffs herein, for herself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said LeFlore County, Oklohama, similarly situated; also comes Daniel Folsom, a resident of Haskell County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said Haskell County, Oklahoma, similarly situated; also comes Winnie R. Spring, a resident of Choctaw County, one of the plaintiffs herein, for herself and for and in behalf of all other members of the Choctaw tribe of Indians resident in Choctaw County, Oklahoma, similarly situated; also comes Ola M. Shaw, a resident of Latimer County, Oklahoma, one of the plaintiffs herein, for herself and for and in behalf of all other members of the Choctaw tribe of Indians resident in Latimer County, Oklahoma, similarly situated; also comes Sam B. Wright, a resident of Pushmataha County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said Pushmataha County, Oklahoma, similarly situated; also comes Albert P. Turner, a resident of Coal County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in Coal County, similarly situated; also comes Thomas Danenhour, a resident of Atoka County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said Atoka County, Oklahoma, similarly situated; also comes Jackson Baker, a resident of McCurtain County, Oklahoma, one of the plaintiffs herein, for himself and for and in behalf of all other members of the Choctaw tribe of Indians resident in said McCurtain County, Oklahoma, similarly situated.

2.

Plaintiffs state that they, and those for and in behalf of whom they bring this suit, each and all of them, are members and
22 citizens of the Choctaw Tribe of Indians, which is one of the Five Civilized Tribes of Indians, and each and all of them are citizens of the United States and the said State of Oklahoma; that on the 25th day of September, 1902, they were duly enrolled as members of the said Choctaw tribe of Indians by the proper authorities, duly authorized under the laws of the United States to compile and publish an official roll of the citizens and members of the said tribe, who were then in charge of such enrollment, and that the names of the plaintiffs and those for and in behalf of whom they bring this suit, now appear upon the official record thereof on file in the office of the Commission to the Five Civilized Tribes; that the plaintiffs themselves and each and all of those for whom they bring this suit, are members and citizens of said tribe and were at all times hereinafter mentioned and now are entitled to all the prop-

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erty, rights, privileges and benefits arising therefrom, and have an interest in all the communal property of the said tribe of Indians of every kind and description incident to and arising from such membership and citizenship in the said tribe; that prior to the allotment of the land and property in severalty to the various citizens thereof, as hereinafter stated, each citizen, including the plaintiffs and those for and in behalf of whom they bring this suit, had and possessed an equal undivided interest therein with every other citizen and at no time and in no manner did these plaintiffs and those for whom they sue, ever forfeit or relinquish any of said rights prior to the time of receiving the allotment of lands as herein below stated.

3.

Plaintiffs further state that by virtue of a treaty duly entered into between the Government of the United States and the said Choctaw tribe of Indians on the 15th day of September, 1830, and duly ratified by the Senate of the Uniteed States on the 27th day of September, 1830, and a Supplemental Treaty entered into on the
23 15th day of September, 1830, by the same parties and likewise duly ratified by the Senate of the United States on the 28th day of September, 1830, and a patent issued to the said Choctaw Tribe of Indians in pursuance thereof bearing date of March 23, 1842, the said tribe became the owner in fee simple of all that tract of land in the said treaties described located in the then unsettled Indian Territory, now comprising all of nine, and a part of two others, of the large counties of the present state of Oklahoma; that under the provisions of the said treaties between the Government and said tribe, the Government, in recognition of its obligation to an inferior and dependent race with which it had concluded negotiations for the exchange of the above lands for other lands then owned by said tribe east of the Mississippi River, agreed and undertook to protect the said tribe in its undisturbed ownership and occupancy of the lands so conveyed to it as it- new home and future abiding place; that the obligation so assumed by the Government contemplated the preservation of such lands for the exclusive use and benefit of the said tribe, all the members thereof and their descendants, and to protect the Indian against his own improvidence and to secure him a fixed home, all as expressed in said treaty and the patent made in pursuance thereof, the said lands and all parts thereof were made inalienable and were never subject to conveyance, incumbrance, liens, judgments or charges of any character whatever, and in that condition so remained under the said guarantee and protection of the United States until modified by an agreement between the United States and said tribe as hereinafter set forth.

4.

Plaintiffs further state that, yielding to urgent and repeated requests on the part of the Government and the persistent importunities of white settlers who had already become numerous, and were

daily becoming more numerous, among the Indian popula-
24 tion, the tribe consented to enter into negotiations with the Government having for their purpose the partition of all tribal lands and property; and the distribution of same among the individual members of the tribe in severalty.

5.

Plaintiffs further state that thereupon, to-wit, on the 23rd day of April, 1897, the Commission to the Five Civilized Tribes representing the Government in convention with the fully constituted representatives of both the Choctaw and Chickasaw Nations or tribes of Indians, concluded an agreement at the city of Atoka in the Indian Territory, the said Choctaw tribe being represented in said convention by Green McCurtain, Principal Chief, J. S. Standley, N. B. Ainsworth, Ben Hampton, Wesley Anderson, Amos Henry and D. C. Garland and the said Chickasaw tribe by R. M. Harris, Governor, Isaac O. Lewis, Holmes Colbert, Robert L. Murray, William Perry and R. L. Boyd, to negotiate an agreement between the United States of America on the one part and the said Nations or Tribes of Indians upon the other part as the contracting parties, such convention and agreement having as its purpose the partition of the tribal property of the said Nations or Tribes and the allowment of lands as aforesaid; that on the said date when the said agreement was concluded the said Tribes of Indians were the owners in fee simple of all the lands above mentioned in the said patent conveyed subject only to the conditions aforesaid; that under the express terms of said agreement each citizen and member of said tribes was entitled to an allotment of a portion of the said tribal lands.

6.

Plaintiffs further state that having in view the long standing obligation of the Government to the Tribes, as so expressed in said treaty and patent arising from the guardianship which the Government exercised over the Indian and his affairs, and recogniz-
25 ing that the welfare of the Indian in the unequal race with the white man which he was about to enter, demanded a continued protection in the undisturbed use and enjoyment for a limited time of the portion of property which would fall to each as an allotment and as an inducement and consideration to the individual Indians of the tribes to accept each his allotment of the tribal — allotted and to be allotted, it was provided by the said convention and stipulated in the agreement entered into, among other things, that the lands so allotted to the individual members of said tribes should be non-taxable while the title remains in the original allottee but not to exceed twenty-one years from the date of patent; the said agreement so far as it relates to such exemption being in words and figures as follows, to-wit:

"All the land allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a

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homestead of one hundred and sixty acres for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent."

That said agreement was enacted into law by Act of Congress approved June 28, 1898, and was duly ratified by a majority of the whole number of the vote cast by the members of the said tribes at an election held for that purpose on the 24th day of August, 1898, such date being prior to the 1st day of December, in said year.

7.

Plaintiffs further state that in pursuance of said agreement, Act of Congress satisfying same, and the vote of the members of the Choctaw tribe also ratifying same as aforesaid, these plaintiffs in conformity with all the laws, regulations and rules prescribed with reference thereto fuly made selection of an allotment as provided in said agreement of their distributive share and proportion of the lands allotted and to be allotted, under the said agreement and did duly select from each allotment a homestead as provided therein and did substantially receive a separate deed for said homestead and also a deed for the surplus land so selected by them, the deed
26 for their said surplus land so received being recorded and of record in the office of the Commissioner to the Five Civilized Tribes, in book of allotment patent record, and the deed for their said homesteads being recorded and of record in the office of the Commissioner to the Five Civilized Tribes in Book 4 of Homestead patent records.

8.

Plaintiffs further state that they, and those for whom they sue, are enrolled members and citizens of the Choctaw tribe of Indians and that their status as such is fixed and determined by the roll of citizens of said tribe duly approved by the Secretary of the Interior according to law, all of which appears of record in the office of the Commissioner to the Five Civilized Tribes, and that a certified copy of the patents both homestead and surplus, duly issued to them are attached hereto, made a part hereof and that certificates of enrollment, showing their number, name, age, sex, and blood, are hereto attached and made a part hereof.

9.

Plaintiffs further allege that the people of Oklahoma in pursuance of an Act of Congress, approved June 16, 1906, as amended by Act of Congress, approved March 4, 1907, commonly called the Enabling Act, duly adopted as provided therein a constitution for the proposed state of Oklahoma, which constitution under proclamation of the President of the United States, bearing date of November 16, 1907, was declared to be in conformity with the Enabling Act and then and therefrom became of binding force and a fundamental law of the State of Oklahoma; that section 270 of the said constitution adopted and proclaimed as aforesaid, contains, among other things, the following provisions:

"All property owned by —— ——, etc., shall be exempt from taxation and such property as may be exempt by reason of treaty stipulations existing between the Indians and the United
27 States Government or by Federal laws, during the force and effect of such treaties or Federal laws."

That the said constitution was adopted by the people of Oklahoma proclaimed and became a law long after the making of the treaties and the passage and approval of the laws aforesaid under which restrictions were placed upon the allotment of Choctaw Indians, including these plaintiffs, as heretofore alleged, and that the said laws imposing restrictions upon such lands as aforesaid were subsisting and valid laws at the time the said constitution was adopted and that because of such laws and treaties and the said provision of the constitution of Oklahoma the allotments of the plaintiffs and those for whom they sue are exempt from taxation and not subject to levies, charges or assessments under any laws of the State of Oklahoma, or of the United States.

10.

Plaintiffs further state that, notwithstanding the foregoing covenants and agreements, an Act of Congress, approved May 27, 1908, entitled "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes and for other purposes" was passed which provided in Section 1 thereof, among other things, as follows:

"That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes, shall, as regards restrictions on alienation or incumbrance, be as follows:

All lands, including homesteads, of said allottees, enrolled as inter-married whites, as freedmen, and as mixed blood Indians, having less than half Indian blood including minors shall be free from all restrictions."

and it is further provided, among other things, in Section 4 of said Act as follows:

"That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes."

And plaintiffs state that they and those for whom they sue, are members of the Choctaw tribe of Indians, and Choctaw citi-
28 zens, and enrolled as of September 25, 1902, and are among the number of those from whose allotments restrictions were removed by the above provision of Section 1. But the plaintiffs state and aver that said Act of Congress, and more particularly the said provision of Section 4 thereof, in so far as the same attempts to deprive these plaintiffs of the exemption, right, privilege, franchise, grant and immunity guaranteed and covenented to him in the said agreements, Act of Congress and deed aforesiad, would impair the obligation of the said contract and agreement and is, therefore, un-

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constitutional and void being in violation of and repugnant to Section 10 of Article 1 of the Constitution of the United States; and is further unconstitutional and void for the reason that it would deprive these plaintiffs of their property, interest and property right in violation of the 5th and 14th amendments to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law.

Plaintiffs further allege that the covenants and agreements entered into between the said Choctaw tribe of Indians and the Government of the United States, approved by Congress as aforesaid and duly ratified by a vote of the members of said tribe, all as heretofore alleged, have been, since said date, and are now, in full force and effect and that the same have never been repealed, modified or abrogated by any agreement of said tribe or by any law of the United States with the consent, approval or ratification of the said tribe or these plaintiffs; that the exemptions guaranteed to these plaintiffs are still in force and effect and that the rights, exemptions and benefits guaranteed to them are of great value and are inviolate.

11.

Plaintiffs further state that the defendant, J. I. Wood, is the duly elected, qualified and acting treasurer of Pittsburg County, Oklahoma; that M. P. Rainy is the duly elected, qualified and
29 acting treasurer of Hughes County, Oklahoma; that Henry J. Bond is the duly elected, qualified and acting treasurer of Atoka County, Oklahoma; that Patrick Greenan is the duly elected, qualified and acting treasurer of Coal County, Oklahoma; that John C. Evans, is the duly elected, qualified and acting treasurer of Latimer County, Oklahoma; that John J. Hinton is the duly elected, qualified and acting treasurer of Le Flore County, Oklahoma; that J. E. McBrayer is the duly elected, qualified and acting treasurer of Haskell County, Oklahoma; that Joe B. Thurston is the duly elected, qualified and acting treasurer of McCurtain County, Oklahoma; that J. W. Amend is the duly elected, qualified and acting treasurer of Pushmataha County, Oklahoma; that E. P. James is the duly*b* elected, qualified and acting treasurer of Bryan County, Oklahoma; that A. J. Stein is the duly elected, qualified and acting treasurer of Choctaw County, Oklahoma; that heretofore, to-wit, on the — day of —— 1909, the regularly constituted officers in each of the above named counties in which the hereinafter described lands are situated, charged with the duties under the laws of Oklahoma of assessing and levying taxes for state and county purposes upon all taxable lands in their respective counties for the year 1909, did assess and levy taxes for the year 1909 against the lands and allotments belonging to the above named plaintiffs and described as follows, to-wit:

On the lands of Michael H. Gleason, located in Pittsburg County, Oklahoma, and being: S. W. N. W. and N. W. S. W. N. W. and S. E. N. W. of Section 34, Township 6 North, Range 15 East.

The lands of Minnie Love, located in Bryan County, Oklahoma, and being: N. /2 of S. E. /4 of S. E. /4 of S. E. /4 of N. E. /4 of S. E. /4 of Section 31, Township 7 South, Range 9 East.

The lands of Henry McGee, located in Hughes County, Oklahoma, and being: S. E. /4 of N. E. /4 and the E. /2 of the S. E. /4 of Section 5, Township 5 North, Range 10 East.

The lands of Isadore James, located in Le Flore County, Oklahoma, and being: S. /2 of the N. E. /4 of the S. W. /4 and S. W. /4 of the S. E. /4 and N. /2 of the S. E. /4 of the S. W. /4 of Section 12, Township 7 North, Range 26 East.

30 The lands of Daniel Folsom, located in Haskell County, Oklahoma, and being: N. /2 of N. /2 of Section 34, Township 9 North, Range 20 East.

The lands of Winnie R. Spring, located in Choctaw County, Oklahoma, and being: N. /2 of S. E. /4 of N. E. /4 of S. E. /4 of S. E. /4 of N. E. /4 of Section 8, Township 6 South, Range 17 East.

The lands of Ola M. Shaw, located in Latimer County, Oklahoma, and being: The North 18.39 acres of Lot 2 and the S. W. 10 acres of Lot 2, Section 1, Township 4 North, Range 18 East.

The lands of Sam B. Wright, located in Pushmataha County, Oklahoma, and being: N. W. /4 of S. W. /4 of Section 14, Township 4 South and Range 16 East.

The lands of Albert P. Turner, located in Coal County, Oklahoma, and being: S. W. /4 of N. W. /4 of S. W. /4 of Section 12, Township 1 North, Range 8 East.

The lands of Thomas Dannenhour, located in Atoka County, Oklahoma, and being: S. E. /4 of S. E. /4 of Section 9, Township 2 South, Range 11 East.

The lands of Jackson Baker, located in McCurtain County, Oklahoma, and being: W. /2 of N. E. /4 of Section 20, Township 6 South, Range 21 East.

All of which said lands are a part of the tribal lands of the said Choctaw tribe of Indians allotted to the above named plaintiffs in pursuance of the laws and agreements aforesaid, and that the same are now and have been subject to the exemption from taxation imposed by the said laws and agreements and that the same are now and have at all the times since these plaintiffs received their deeds therefor as aforesaid, owned by them as original allottees thereof, and that the title received by them by virtue of said deeds of conveyance have at all the times and are now vested in these plaintiffs and those for whom they bring this suit; that the said taxes so levied constitutes an incumbra-ee, charge and cloud upon the title of said allotments; that the said county treasurers heretofore named are now threatening and attempting to collect the said taxes and are threatening and attempting and about to involve these plaintiffs and those for whom they bring this suit, in additional large expense by way of penalties for delinquencies on their refusal to pay the same and have attempted and will attempt to institute proceedings to collect
31 the said taxes and to sell the said allotments at public auction in satisfaction of the same, and unless restrained will do so, all to the very great damage and irreparable injury of these plaintiffs and those for whom they sue and in violation of their rights under the exemption aforesaid; and plaintiffs further state and aver that the acts and conduct of the said defendants as aforesaid are

without authority of law, illegal and void and that their said property is exempt from taxation and not subject to pay the taxes so assessed and levied upon and against it under any law of the State of Oklahoma, and that any law of the said state authorizing or attempting to authorize the taxation of the said allotments of these plaintiffs, or any part thereof, is in violation of the said exemption rights of these plaintiffs and in violation of the said section and amendment of the Constitution of the United States, and, therefore, void and of no force and effect.

Wherefore, the premises considered the plaintiffs pray for a permanent injunction against the said defendants aforesaid, each and all of them, perpetually enjoin-g and restraining them from collecting or attempting to collect said taxes, and from selling or attempting to sell or offering for sale the lands and allotments of the plaintiffs above described, and from issuing or attempting to issue any certificates of sale thereon, and from issuing or attem*t*ping to issue or execute deeds therefor under any sale or attempted sale thereof, and from filing or attem*t*ping to file a return of any sale or attempted sale in their respective counties, and from attempting in any manner to enforce the said charge; and plaintiffs further pray for a decree of this court cancelling any lien that may exist or attach to said property by reason of the assessment and levy of said tax upon the same as aforesaid, and that, pending the hearing hereof, a temporary restraining order and injunction be granted by this court restraining and enjoining them and each of them from collecting or attempting to collect, said tax, and from selling, offering for sale,
or attem-ting to sell said lands or any part thereof until the
32 further and final order of this court. That plaintiffs have judgment for their damages, for the cost of this action, and for all other and proper relief not herein specifically prayed for, which to the court may seem just and proper.

W. L. STURDEVANT,
McCURTAIN & HILL,
Att'ys for Pl'ffs.

STATE OF OKLAHOMA,
Pittsburg County:

Michael H. Gleason, of lawful age, being first duly sworn says that he is one of the plaintiffs in the foregoing petition above named; that he has read the same and knows the contents thereof and that the facts set forth therein are true.

(Signed) MICHAEL H. GLEASON.

Subscribed and sworn to before me this the — day of June, 1910.

(Signed) GEO. L. HILL,
Notary Public.

My Commission expires on the 16th day of August, 1913.

33 That on the 3rd day of June, 1910, a stipulation was entered into between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, and the various

county attorneys in the counties situated in the Choctaw Nation, which stipulations, together with the endorsements thereon, are in words and figures, as follows, to-wit:

34 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days give the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be emended to show additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurrer now on file the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of mis-joinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the state of Oklahoma.

Consent is hereby given by the Attorney General's office, providing the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or — now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes,

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Haskell, Latimer, LeFlore, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
By T. B. LATHAM,
Attorneys for Plaintiffs.
W. P. McGINNIS,
County Attorney of Latimer County,
State of Oklahoma.
CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of Latimer county in the State of Oklahoma, in consideration of the premises hereby con-
35 sents that the above and foregoing stipulation shall apply to said Latimer County to all intents and purposes as though especially made in reference to the same.

Dated the 13th day of June, 1910.

W. P. McGINNIS,
County Attorney of Latimer County, Oklahoma.

36 The undersigned county attorney of Haskell County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulations shall apply to said Haskell County to all intents and purposes as though especially made in reference to the same.

Dated 13th day of June, 1910.

JOSEPH W. FOSTER,
County Att'y of Haskell County, State of Oklahoma.

262. Filed. Tal Millwee, Clerk Superior Court. June 27, 1910. By W. J. Kendrick, Deputy Clerk.

37 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurrer now on file, the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of misjoinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, provides the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or — now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, LeFlore, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
By T. B. LATHIM,
Attorneys for Plaintiffs.

ROB'T E. STEELE,
County Attorney of McCurtain County,
State of Oklahoma.

CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of McCurtain County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said McCurtain County to all intents and purposes as though especially made in reference to the same.

Dated the 10th day of June, 1910.

ROB'T E. STEELE,
County Attorney of McCurtain County, Oklahoma.

38 Filed. Tal Millwee, Clerk Superior Court. June 27, 1910. By W. J. Kendrick, Deputy Clerk.

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39 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurer now on file, the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of misjoinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, providing the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or — now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, Le Flore, Pushmataha, Choctaw, Mc-

Curtain, Bryan, Coal and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
Attorneys for Plaintiffs.
J. M. WILLIS,
County Attorney of Choctaw County,
State of Oklahoma.
CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of Choctaw County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said Choctaw County to all intents and purposes as though especially made in reference to the same.

Dated the 4th day of June, 1910.

J. M. WILLIS,
County Attorney of Choctaw County, Oklahoma.

40 Endorsements: 262. Filed June 27, 1910. Tal Millwee, Clerk Superior Court, By W. J. Kendrick, Deputy Clerk.

41 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurrer now on file, the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall

file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of misjoinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, providing the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or — now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, Le Flore, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
Attorneys for Plaintiffs.

J. T. McINTOSH,
County Attorney of Bryan County,
State of Oklahoma.

CHAS. WEST,
Attorney General of Oklahoma.

W. D. BUCKLEY,
County Attorney of Le Flore County, Oklahoma.

The undersigned county attorney of Bryan County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said Bryan County to all intents and purposes as though especially made in reference to the same.

Dated the 3rd day of June, 1910.

J. T. McINTOSH,
County Attorney of Bryan County, Oklahoma.

42 Endorsements: 262. Filed June 27, 1910. Tal Millwee, Clerk Superior Court. By W. J. Kendrick, Deputy Clerk.

43 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurrer now on file, the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of misjoinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, provides the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, Le Flore, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties, or to such of them as

may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
Attorneys for Plaintiffs.
T. R. DEAN,
County Attorney of Pittsburg County, State of Oklahoma.
CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of Pittsburg County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said Pittsburg County to all intents and purposes as though especially made in reference to the same.

Dated the 3rd day of June, 1910.

T. R. DEAN,
County Attorney of Pittsburg County, Oklahoma.

44 And the undersigned county attorney of Coal County, State of Oklahoma, does hereby consent to the foregoing stipulation, and that the same shall apply to Coal County.

Dated the 7th day of June, 1910.

JAS. R. WOOD,
County Attorney of Coal County, Okla.

State of Oklahoma, County of Pittsburg. In the Superior Court. Michael H. Gleason, Plaintiff, vs. J. I. Wood, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant. Stipulation. Filed June 27, 1910. Tal Millwee, Clerk Superior Court, By W. J. Kendrick, Deputy Clerk.

45 STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of the County of Pittsburg, State of Oklahoma, Defendant.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant, appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiff in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show

additional parties plaintiff, such as shall be added by the plaintiffs under this stipulation, and the demurrer now on file, the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of misjoinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, providing the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been or now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remains in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, Le Flore, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
By T. B. LATHIM,
Attorneys for Plaintiffs.
J. W. JONES,
County Attorney of Atoka County,
State of Oklahoma.
CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of Atoka County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said Atoka County to all intents and purposes as though especially made in reference to the same.

Dated the 8th day of June, 1910.

J. W. JONES,
County Attorney of Atoka County, Oklahoma.

46 Endorsements: 262. Filed June 27, 1910. Tal Millwee, Clerk Superior Court, By W. J. Kendrick, Deputy Clerk.

47 That on the 29th day of March, 1910, a temporary injunction order was granted on the original petition of the plaintiff, Michael H. Gleason, which temporary injunction order is in words and figures, with all the endorsements thereon, as follows, to-wit:

48 STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court in and for said County and State.

No. 262.

MICHAEL H. GLEASON, Plaintiff,
v.
J. I. WOOD, County Treasurer of Pittsburg County, Defendant.

Order.

Upon reading the petition of plaintiff herein, it appearing to the court that the plaintiff, upon the facts stated in said petition, is entitled to the relief prayed for, it is ordered and adjudged that a temporary injunction be granted, enjoining the defendant, his servants and agents, from collecting or attempting to collect, taxes on the following described land:

The South-west quarter (S. W. ¼) of the North-west quarter (N. W. ¼) and the South-west quarter (S. W. ¼) and the North-west quarter (N. W. ¼) of the South-west quarter (S. W. ¼) of the North-west quarter (N. W. ¼) and the South-east quarter (S. W. ¼) of the North-west quarter (*M.* W. ¼) of Section 34, Township 6 North, Range 15 East,

For the year 1909, and from selling, offering for sale or attempting to sell said land or any part thereof until the further and final orders of this court, upon the plaintiff filing with the clerk an approved bond in the sum of fifty ($50.00) dollars conditioned as required by law with sufficient sureties.

Witness my hand this 29th day of March, 1910.

P. D. BREWER, *Judge.*

3/29/10. 262. Filed. Tal Millwee, Clerk Superior Court. March 29, 1910. By W. J. Kendrick, Deputy Clerk.

49 That on the 6th day of December, 1909, præcipe for summons was filed in said cause, on the original petition of the plaintiff, Michael H. Gleason, which præcipe for summons is in words and figures, with all the endorsements thereon, as follows, to-wit:

STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court of Pittsburg County.

MICHAEL H. GLEASON, Plaintiff,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Defendant.

Præcipe for Summons.

The clerk of said court will issue a summons in the above entitled cause, directed to the Sheriff of Pittsburg County, against the defendant towit: J. I. Wood, treasurer of Pittsburg County, State of Oklahoma, requiring said defendant to answer on or before the 30th day of December, 1909, and returnable on the 10 day of December, 1909, and you will endorse thereon, suit brought for Injunction and unless defendant answer judgment will be taken for the sum of $— with interest at the rate of — per cent per annum from the — day of —— 19—.

McCURTAIN & HILL,
Attorney- for Plaintiff.

Dated this 6 day of December, 1909.

Filed. Tal Millwee, Clerk Superior Court. Dec. 6, 1909. By —— ——, Deputy.

50 That on the 6th day of December, 1909, summons was issued in said cause, on the original petition of the plaintiff, Michael H. Gleason, which summons with all the endorsements thereon, is in words and figures, following, to-wit:

STATE OF OKLAHOMA,
Pittsburg County, ss:

The State of Oklahoma to the Sheriff of Pittsburg County, Greeting:

You are hereby commanded to notify J. I. Wood, Treasurer of Pittsburg County, State of Oklahoma, that he has been sued by Michael H. Gleason in the Superior Court of Pittsburg County, Oklahoma, and that he must answer the petition of said plaintiff, Michael H. Gleason filed against him in the clerk's office of said court on or before the 30th day of December, 1909, or said petition will be taken as true and judgment rendered accordingly. You will make due return to this summons on or before the 10th *say do* December, 1909. Given under my hand and seal of said court this 6th day of December, 1909.

TAL MILLWEE,
Clerk of Superior Court,
By J. H. SMITHY, *Deputy.*

[SEAL.]

COPY

Suit brought for injunction. If the defendant fail to answer, judgment will be taken for the sum of $— with interest at the rate of — per cent per annum from the — day of —— 19— and an attorney fee of $— and costs of suit.

TAL MILLWEEL, *Clerk,*
By J. H. SMITHY, *Deputy.*

I received this summons on the 7th day of December, 1909, at 10 O'clock A. M. and executed the same in my County by delivering a true copy of the within summons with all the endorsements thereon to J. I. Wood, County Treasurer of Pittsburg County, Oklahoma, on the 7th day of December, 1909, at 10:30 o'clock A. M.

JOHN A. HARRISON, *Sheriff,*
By W. S. O'NEAL, *U. S.*

No. 262. Summons. Michael H. Gleason, Plaintiff, vs. J. I. Wood, Treasurer of Pittsburg County, State of Oklahoma, Defendant. Issued Dec. 5th, 1909. Returnable Dec. 10th, 1909. Answer due Dec. 30th, 1909. Filed 12-7-1909. Tal Millwee, Clerk, By J. H. Smithy, Deputy. McCurtain & Hill, Attorney for plaintiff. I hereby certify the within to be a true copy of the original summons now in my possession with all the endorsements thereon. This — day of —— 19—. —— —— Sheriff By —— —— Deputy. Sheriff's Fees: Serving summons (first person) $.50. Copy of summons $.25, Total $.75.

51 . That thereafter, on the 9th day of July, 1910, the defendants, J. I. Wood, et al., filed herein their demurrer, which, together with the endorsements thereon, is in the words and figures following, to-wit:

In the County Superior Court within and for the County of Pittsburg and State of Oklahoma.

No. 262.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, et al., Defendants.

Injunction.

Demurrer to Plaintiffs' Amended Petition or Bill of Complaint.

Come now the defendants, and each of them, and for their joint and several demurrers, each for himself demurs to the plaintiffs' amended petition or bill of complain- filed in this cau , for the reasons following, that is to say:

First. Because the said amended petition or bill of complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiffs, or any of them, as against the defendants, or any of the-, and does not entitle said plaintiffs or any of them to the relief prayed for in the said amended petition or bill of complaint.

Second. Because said amended petition or bill of complaint shows upon its face that plaintiffs are liable respectively for the taxes sought to be enjoined.

Third. Because there is no equity in the said amended petition or bill of complaint.

Wherefore, Defendants pray the judgment of the court, and that they be not required to further plead to said amended peti-
52 tion, or bill of complaint, but permitted to go hence without day and have and recover their costs herein laid out and expended.

T. R. DEAN,
County Attorney of Pittsburg County, Oklahoma.
CHARLES WEST,
Attorney General.
CHAS. L. MOORE,
Assistant Attorney General.

No. 262. In the Superior Court within and for the County of Pittsburg and State of Oklahoma. Michael H. Gleason, et al., Plaintiffs, vs. J. I. Wood, County Treasurer of Pittsburg County, Oklahoma, et al., Defendants. Demurrer to Plaintiffs' Amended Petition or Bill of Complain-. Filed July 9, 1910. Tal Millwee, Clerk Superior Court, By W. J. Kendrick, Deputy Clerk.

53 STATE OF OKLAHOMA,
County of Pittsburg, ss:

In the Superior Court in and for said County and State.

No. 277.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County et al., Defendants.

Decree.

And now on this 9th day of July, 1910, this cause having been heard by the court upon the amended petition filed herein on June 27, 1910, by the plaintiffs, Michael H. Gleason, and others, and the demurrer of the defendants, J. I. Wood, County Treasurer of Pittsburg County, and others, and the plaintiffs appearing by their attorneys, McCurtain & Hill, and the defendants, J. I. Wood, as County Treasurer of Pittsburg County, and others, appearing by their attorney, T. R. Dean, the duly elected and qualified County Attorney for Pittsburg County, the cause was argued and submitted

OR COPY

to the court upon said amended petition and demurrer and the court having read the amended petition of the plaintiffs and the demurrer of the defendants and having heard argument of counsel and being fully advised in the premises finds that the said amended petition does not state facts sufficient to constitute a cause of action against the defendants and that therefore the demurrer of the defendants is well taken and should be sustained.

In consideration of the premises, therefore, it is by the Court considered, adjudged and decreed that the said demurrer to the petition be, and the same is, hereby sustained. Whereupon the plaintiffs refuse to plead further but elect to stand upon their amended petition, and it is therefore considered, adjudged and decreed that the plaintiffs' said amended petition be dismissed for want of
54 equity and it is further considered, adjudged and decreed that the defendants herein have judgment against the plaintiffs for their costs in this behalf expended.

To the entering of which decree, sustaining the demurrer, dismissing the plaintiffs' amended petition, and awarding judgment to the defendants against the plaintiffs for defendants' costs herein, the said plaintiffs, Michael H. Gleason, et al., excepts, and prays an appeal therefrom to the Supreme Court of the State of Oklahoma, which is by the court allowed upon the plaintiffs' giving an appeal bond in the sum of One Thousand Dollars within thirty days from this date, and ten days is given plaintiffs within which to prepare and serve their casemade on the defendants and five days after service is allowed the defendants to suggest amendments, and three days thereafter is allowed in which to have the same settled and signed.

(Signed) P. D. BREWER,
Judge Superior Court.

No. 262. Michael H. Gleason et al., Plaintiffs, vs. J. I. Wood, County Treasurer of Pittsburg County et al., Defendants. Decree. Filed on the 18th day of July, 1910. Tal Millwee, Clerk, by J. W. Kendrick, Deputy.

55 That on the 19th day of July, 1910, plaintiffs filed herein their appeal bond, which bond, together with the endorsements thereon, is in words and figures following, to-wit:

Bond No. 27832.

In the Superior Court of Pittsburg County, State of Oklahoma.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al., Defendants.

Know all men by these presents:

That we, Michael H. Gleason et al., as Principal, and the Southern Surety Company, a corporation organized under the laws of the State of Oklahoma, with General Offices at Muskogee, Oklahoma,

s Surety, are held and firmly bound unto J. I. Wood, County Treasrer of Pittsburg County, Oklahoma, et al., defendants in the above ntitled cause, in the sum of One Thousand Dollars ($1,000.00), or the payment of which, well and truly to be made, we, and each f us, do hereby jointly and severally bind ourselves, our heirs, dministrators, successors and assigns.

Dated this 19th day of July, A. D. 1910.

The condition of the foregoing obligation is such that:

Whereas, on the 9th day of July, 1910, judgment was rendered n the above entitled cause dismissing the plaintiffs' petition and n favor of the defendants against said plaintiffs for the costs of uch suit; and

Whereas, the plaintiffs have taken an appeal from said judgment o the Supreme Court of the State of Oklahoma.

Now therefore, If the said Principal herein shall pay to the said lefendants herein all money and costs due by the plaintiffs in case udgment or final order shall be adjudged against them, then this bligation shall be void; otherwise to remain in full force and effect.

his x mark
MICHAEL H. GLEASON.
SOUTHERN SURETY COMPANY,
[SEAL.] By E. G. DAVIS, *Secretary.*

Witness to mark of Michael H. Gleason, who cannot write and at whose request I signed his name.
GEORGE L. HILL,
McAlester, Okla.

Witness-:
LODUSKA GLEASON.
SELA PATRICK.

Approved July 19, 1910.
TAL MILLWEE.
Clerk Superior Court,
By W. J. KENDRICK, *Deputy.*

56 STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court in and for said County and State.

No. 262.

MICHAEL H. GLEASON et al., Plaintiffs.
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al., Defendants.

Certificate of Attorneys.

We hereby certify that the foregoing casemade contains a full, true, correct and complete copy and transcript of all the proceedings

COPY

in said cause, including all pleadings filed and proceedings had, with the exception of the original petition of the plaintiff, Michael H. Gleason, which petition is omitted by agreement of the attorneys for the parties hereto, for the reason that the amended petition of the above plaintiffs contains and embraces in full the original petition of the plaintiff, Michael H. Gleason, the only changes being in parties plaintiff and parties defendant; also that said casemade contains all orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true and correct and complete casemade.

Witness our hands this 11th day of July, 1910.

McCURTAIN & HILL,
Attorneys for Michael H. Gleason et al.

57 STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court in and for said County and State.

No. 262.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County et al., Defendants.

Acceptance of Service.

I, the undrrsigned attorney for J. I. Wood, County Treasurer of Pittsburg County, in the foregoing suit, certify that the foregoing casemade was duly served on us on this the 19th day of July, 1910.

T. R. DEAN,
By J. READ MOORE,
Attorney for J. I. Wood, County Treasurer of Pittsburg County.

58 STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court in and for said County and State.

No. 262.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County et al., Defendants.

Stipulation of Attorneys.

It is hereby stipulated and agreed by and between the parties hereto that the foregoing casemade contains a full, true and cor-

rect and complete copy and transcript of all the proceedings in said cause including all pleadings filed and proceedings had, with the exception of the original petition of the plaintiff, Michael H. Gleason, which petition it is hereby agreed shall be omitted for the reason that the amended petition of the above plaintiffs contains and embraces in full the original petition of the plaintiff, Michael H. Gleason, the only changes being in parties plaintiff and parties defendant; that said casemade contains all the orders made and exceptions allowed and all of the records upon which the judgment and journal entry in said cause were made, and the same is a full, true and correct casemade; and the said defendants waive the right to suggest amendments to said casemade and hereby consent that the same may be settled immediately and without notice, and hereby join in the request of the plaintiffs that the judge of said court settle the same and order the same certified to the clerk of the Superior Court and filed according to law; and said defendants hereby waive the issuance and service of summons in error from the Supre- Court of the State of Oklahoma.

McCURTAIN & HILL,
Attorneys for Michael H. Gleason et al.
T. R. DEAN,
By J. READ MOORE.
Attorneys for J. I. Wood, County Treasurer of Pittsburg County.

(Filed Jul- 20, 1910. W. H. L. Campbell, Clerk.)

59 STATE OF OKLAHOMA,
Pittsburg County, ss:

In the Superior Court in and for said County and State.

No. 262.

MICHAEL H. GLEASON et al., Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County et al., Defendants.

This is to certify that the foregoing above case made and the amendments thereto have been duly served in due time, and the amendments thereto duly suggested, and the same duly submitted to me for settlement and signing, as required by law, by the parties to said cause; that the same as above set forth, and as corrected by me is true and correct, and contains a true and correct statement of all the pleadings, motions, orders, findings, proceedings, and judgments had in such cause, with the exception of the original petition of the plaintiff, Michael H. Gleason, which petition is omitted by agreement of the attorneys for the parties hereto, for the reason that said original petition of Michael H. Gleason is contained in full in the amended petition of the above plaintiffs, Michael H. Gleason, et al., the only changes being in parties plaintiff and parties defendant;

and I hereby settle, allow, certify and sign the same as true and correct, and hereby order that the clerk of the Superior Court attest the same with the seal of said court, and file the same of record.

Witness my hand at McAlester, this 19th day of July, 1910.

P. D. BREWER,
Judge of the Superior Court.

Attest:
TAL MILLWEE,
Clerk Superior Court,
By W. J. KENDRICK.

Certificate of True Copy.

STATE OF OKLAHOMA,
Pittsburg County, ss:

I, Tal Millwell, Clerk of the Superior Court in and for the county and State aforesaid, do hereby certify that the instrument hereto attached is a full, true and correct copy of the case made in case No. 262, Michael H. Gleason, et al., vs. J. I. Wood, County Treasurer of Pittsburg County, et al., as the same now appears on file in this office. Witness my hand and the seal of said court, at McAlester, Oklahoma, this 19th day of July, 1910.

TAL MILWEE,
Clerk of the Superior Court,
[SEAL.] By W. J. KENDRICK, *Deputy.*

60 Endorsement: No. 1877. (Filed July 20, 1910. W. H. L. Campbell, Clerk.)

61 In the Supreme Court of Oklahoma.

No. 1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD et al., Defendants in Error.

Motion to Advance.

Come now the parties and present this motion asking the court to advance this cause and set a time for argument at the earliest possible date without waiting until the briefs are filed herein because of a stipulation hereto attached, marked "Exhibit A" which shows that this is a test suit to determine the right of the State of Oklahoma to tax certain lands of Indian citizens in the Choctaw Nation and by the terms of the stipulation that all the original allottees of the Choctaws in Pittsburg, Haskell, Hughes, Le Flore, Latimer, Pushmataha, Choctaw, McCurtain, Bryan, Coal and Atoka Counties hereto appearing by McCurtain & Hill, the regularly employed attorneys for the Choctaw Nation and by agreement made between the Attorney General and the county attorneys in said re-

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spective counties, the said action shall apply to all the lands to which this cause made with change of parties are applicable. That a large part of the lands in said counties are owned by the original allottees and that said cause is of supreme importance to the government of said counties and the state of Oklahoma because of the interests affected hereby and the multiplicity of the lands to which this case is applicable constitutes one of the largest sources of revenue to the said counties and the state for taxation. That the nature of this case is to determine whether certain allotted lands are subject to taxation in said state.

McCURTAIN & HILL,
Attorneys for Plaintiffs in Error.
CHAS. WEST, *Att'y Gen.*

62 "EXHIBIT A."

STATE OF OKLAHOMA,
County of Pittsburg:

In the Superior Court.

MICHAEL H. GLEASON and Others, Plaintiffs,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, State of Oklahoma, and Others, Defendants.

Stipulation.

It is hereby stipulated between the plaintiffs, appearing by McCurtain & Hill, and the defendant appearing by T. R. Dean, County Attorney of Pittsburg County, and the Attorney General, that the judgment shall be set aside, and ten (10) days given the plaintiffs in which to join as co-plaintiffs all persons similarly situated in the Choctaw Nation within the State of Oklahoma.

That the petition in the Gleason case shall be amended to show additional parties plaintiff, such as shall be added by the plaintiffs under this Stipulation, and the Demurrer now on file the defendant shall have the right within ten (10) days to replace by such plea as he shall elect to the cause then submitted to the Court for its decision.

That the losing party shall take an immediate appeal to the Supreme Court of the State, and shall not use more than thirty days (30) for the perfecting of his appeal; and thereupon all parties shall file a written stipulation requesting the Supreme Court to advance the cause for argument and decision at the earliest possible date; that such stipulation shall be filed not later than ten (10) days after the appeal has been perfected.

63 That the court may consider the question of advancement before the briefs are filed on appeal, and that the question of mis-joinder of parties plaintiff and lack of jurisdiction of the person of the defendant shall be and is hereby waived in so far as the

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same apply to taxation of Indian lands of the Choctaw Nation in the State of Oklahoma.

Consent is hereby given by the Attorney General's office, providing the assent of the various county attorneys in the respective counties in which lands are to be sold is given, that the proceedings by which property of the various plaintiffs and persons to become plaintiffs herein have been now being taken to sell for taxes, shall be stayed until the judgment of the court herein and then such disposition of the matter of the supersedeas shall be made as this court or the Supreme Court shall deem proper in the premises.

This stipulation is to cover all Indian lands the title to which remain in the original allottees of the Choctaws in Pittsburg, Hughes, Haskell, Latimer, Le Flore, Pushmataha, Choctaw, McCurtain, Bryan, Coal, and Atoka Counties, or to such of them as may through their respective county attorneys agree to this stipulation.

McCURTAIN & HILL,
Attorneys for Plaintiffs.
T. R. DEAN,
County Attorney of Pittsburg County, State of Oklahoma.
CHAS. WEST,
Attorney General of Oklahoma.

The undersigned county attorney of Pittsburg County in the State of Oklahoma, in consideration of the premises hereby consents that the above and foregoing stipulation shall apply to said Pittsburg County to all intents and purposes as though especially made in reference to the same.

Dated the 3rd day of June, 1910.

T. R. DEAN,
County Attorney of Pittsburg County, Oklahoma.

64 And the undersigned county attorney of Coal County, State of Oklahoma, does hereby consent to the foregoing stipulation, and that the same shall apply to Coal County.

Dated this 7th day of June, 1910.

JAS. R. WOODS,
County Attorney, Coal County.

Endorsed: No. 1877. In the Supreme Court. Michael H. Gleason, et al., Plaintiffs in Error, vs. J. I. Wood, et al., Defendants in Error. Motion to advance. (O. K. & set for Sept. term). (Filed Jul- 25, 1910. W. H. L. Campbell, Clerk.) McCurtain & Hill, Attorneys for Plaintiffs in error.

65 And thereafter, to-wit: on the 17th day of August, 1910, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, July Term, 1910, August 17th, 1910, Ninth Judicial Day.

#1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD et al., Defendants in Error.

And now on this day it is ordered by the court that the motion herein, to advance the above cause on the docket, be, and the same is hereby allowed, and the cause is set for September 1910 Term.

66 In the Supreme Court of the State of Oklahoma.

No. 1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
v.
J. I. WOOD et al., Defendants in Error.

To the Honorable Chief Justice and the Justices of Said Court:

Come now the plaintiffs in error, Michael H. Gleason, et al., by their attorneys, McCurtain & Hill, and move the honorable court for an extension of time within which to file their brief herein, to the 13th day of September, 1910, and as their grounds for said motion, show as follows:

That there is now pending before this honorable court another case, as follows, to-wit:

No. 1820.

GEORGE NELSON, Guardian of Beatrice Nelson, Plaintiff in Error,
vs.
J. I. WOOD, County Treasurer, Defendant in Error.

wherein the same questions are involved as are presented in the case herein, and in the said case of George Nelson, Guardian of Beatrice Nelson, v. J. I. Wood, Treasurer, the time for filing brief has by this court been extended to September 13, 1910, and it is desirable to present both the Nelson case and the Gleason case at the same time, as they involve the same questions.

McCURTAIN & HILL,
Attorneys for Plaintiff in Error.

67 STATE OF OKLAHOMA,
Pittsburg County, ss:

D. C. McCurtain, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiffs in error herein; that he has read the foregoing motion by him subscribed, and that the matters and things therein set forth are true.

D. C. McCURTAIN.

Subscribed and sworn to before me this the 26th day of August, 1910.

GEO. L. HILL,
Notary Public.

Commission expires Aug. 16, 1911.

Service of the above motion is hereby accepted and consent that said motion may be allowed is given.

T. R. DEAN, *Co. Att'y,*
By J. READ MOORE, *Ass't Co. Att'y,*
Attorneys for Defendants in Error.

Endorsed: No. 1877. Michael H. Gleason, et al., plaintiffs in error v. J. I. Wood et al., defendants in error. Motion to extend time for filing brief herein. (Filed Aug. 29, 1910. W. H. L. Campbell, Clerk.) McCurtain & Hill, Attorneys for Plaintiffs. G. L. H.

68 And thereafter, to-wit: on the 6th day of September 1910, in the Supreme Court of Oklahoma the following proceedings were had in said cause:

Supreme Court, July Term, 1910, September 6th, 1910, Eleventh Judicial Day.

#1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD et al., Defendants in Error.

And now on this day it is ordered by the court that the order heretofore entered herein setting the above cause for September 13th 1910, be, and the same is hereby set aside and the cause to be set when briefs of both parties are filed, and set with cases 1794, 1795 and 1761.

69 And thereafter, to-wit: on the 13th day of September 1910, in the Supreme Court of the State of Oklahoma the following proceedings were had in said cause:

Supreme Court, September Term, 1910, September 13th, 1910, First Judicial Day.

#1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD, Treas., Defendant in Error.

And now on this day it is ordered by the court that one set of briefs shall be considered briefs for this case and case No. 1820.

70 And thereafter, to-wit: on the 12th day of January 1911, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Supreme Court, January Term, 1911, January 12th, 1911, Third Judicial Day.

#1877.

MICHAEL F. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD et al., Defendants in Error.

And now on this day the above cause is argued orally, and the cause is submitted, on the record, briefs and oral argument.

71 And thereafter, to-wit: on the 21st day of March 1911, in the Supreme Court of Oklahoma the following proceedings were had, in said cause:

Supreme Court, March Term, 1911, March 21st, 1911, First Judicial Day.

#1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD et al., Defendants in Error.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having duly considered the same and being fully advised in the premises, finds: that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed.

Opinion by *By* Dunn, J.

All the Justices concur, except Kane, J., who dissents.

72 In the Supreme Court of the State of Oklahoma.

(Filed 21st Day of March, 1911.)

No. 1877.

MICHAEL H. GLEASON et al., Plaintiffs in Error,
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al., Defendants in Error.

Syllabus.

Section 4 of an Act of Congress of May 27, 1908, (ch. 199, 35 Stat. L. 312-313) entitled, "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and

for other purposes," is valid, and under and by virtue thereof, the lands of all allottees of the Five Civilized Tribes of Indians from which restrictions have been or shall be removed, are subject to taxation under the general laws of the state equally with the property of all other persons.

Error from the Superior Court of Pittsburg County.

P. D. Brewer, Trial Judge.

Affirmed.

McCurtain & Hill, and W. L. Sturdevant, Attorneys for Plaintiffs in Error.

Charles West, Attorney General, and Charles Moore, Assistant Attorney General, Attorneys for Defendants in Error.

73 Opinion of the Court, by DUNN, *J:*

This case presents error from the Superior Court of Pittsburg County, the plaintiffs being citizens and members and the original allottees of the Choctaw Tribe of Indians, and holding allotments of lands in several different counties of the state. The action is brought to enjoin and restrain the defendants as treasurers of those counties from collecting or attempting to collect taxes on said lands for the year 1909. It is contended by counsel that the allotted lands of the Choctaw Tribe of Indians cannot be taxed so long as the title remains in the original allottee not to exceed twenty-one years from the date of the patent. That by Sec. 29 of an act of Congress of June 28, 1898, (So. Stats. L. 459) generally known as the Atoka Agreement, the United States government made a valid and enforceable contract between itself and the Choctaw nation, and that among the terms of said contract was the provisions that "all the lands allotted shall be non-taxable while the title remains in the original allottee but not to exceed twenty-one years from date of patent." That this agreement was ratified by a vote of the Choctaw Tribe of Indians and all of the provisions contained therein were adopted by them, and it is claimed that the exemption from taxation was a part of the consideration to them for entering into the same. That the exemption was not a gratuity or privilege, but on its vesting, became a property right, based upon a sufficient consideration, accepted by both parties which could not be taken away by subsequent legislation. It is further contended that the constitution of the state of Oklahoma, adopted in 1907, recognized the force and validity of this contract in Sec. 6, of art. 10 (p. 289 Snyder's Const.) wherein it is provided that:

"All property owned," etc. * * * "shall be exempt from taxation, and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States
74 government, or by Federal laws during the force and effect of such treaties or Federal laws."

It is claimed that herein was a recognition and ratification by the state of Oklahoma, of the act of Congress above referred to, which constituted a contract between the state and the Indians which could not be abrogated by subsequent acts of Congress. May 27, 1908, Congress passed an act (ch. 199, 35 Stat. L. 312), entitled "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes," among the provisions of which are the following:

SEC. 1. "That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. * * *"

Section 4 of said act provides:

"That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes. * * *"

Plaintiffs state that they and they for whom they sue are members of the Choctaw Tribe of Indians, and Choctaw citizens, and original allottees enrolled as of September 25, 1902, and are among the number of those from whose allotments restrictions were removed by the above provisions. To the petition filed setting forth in full the facts upon which reliance is placed to recover, a general demurrer was filed which, in due course, was heard by the court and sustained, and the case has been lodged in this court for review.

The question raised is, after these lands had been taken, under the terms and provisions of the allotment acts agreed to by the members of the different tribes, which provided exemption from taxation, did Congress have the power to remove the restrictions and to subject them under the act of May 27, 1908, to taxation and all civil
75 burdens as though they were the property of other persons than the allottees of such tribes.

In an action arising in the Creek Nation, United States v. Shock, recently decided by Judge Campbell of the Eastern District of Oklahoma, but not yet reported, it is said:

"The constitution of this state (sec. 270) provides that 'such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States government, or by Federal laws, during the effect of such treaties or Federal laws, shall be exempt from taxation.' Congress, by the act of April 26, 1906, (34 Stat. 137), provided: 'That all lands upon which restrictions are removed shall be subject to taxation and the other lands shall be exempt from taxation as long as the title remains in the original allottee.' The last mentioned act, as its title indicates, is to provide for the final disposition of the affairs of the Five Civilized Tribes, and the lands referred to in the provision above mentioned are the lands allotted to members of the Five Civilized Tribes, the subject of the tax here involved. By act of May 27, 1908, (35 Stat. 312) it was further provided: 'That all lands from which restrictions have

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been or shall be removed, shall be subject to taxation and all other civil burdens, as though it were the property of other persons than allottees of the Five Civilized Tribes.' From this it is clear that regardless of prior legislation or treaties the intention and policy of Congress as expressed by the two acts last referred to, was that so long as these allotted lands remain subject to any restrictions upon alienation, they shall not be taxed by the state, but whenever all restriction upon alienation shall be removed, then such lands shall be subject to taxation, and other civil burdens to which other lands are subjected. Therefore, any attempt on the part of the state to tax restricted lands would be in violation not only of the acts of Congress enacted pursuant to its paramount and sole right to legislate regarding these lands, but would also violate the exemption expressed in the state constitution. In view of the purpose which prompted Congress, in the first instance, to place restrictions upon the alienation of these allotted lands, and in view, also, of the purpose of Congress, as expressed in the act of 1893, providing for the Dawes Commission, and various subsequent acts, to prepare what was then the Indian Territory for statehood, with a view to the establishment of a state at an early date, which has now been accomplished, it is entirely reasonably that Congress should not have intended the exemption from taxation to exist longer than the time during which the lands were inalienable. Goudy v. Meath, 203 U. S. 146. Therefore the complainant in this case can not successfully contend that the lands of any particular class of Creek allottees were exempt from taxation by the state at any particular time, unless it appears that at such time the lands were inalienable by reason of restrictions still existing upon their alienation."

While the foregoing expresses the policy of Congress and holdthat the lands from which the restrictions have been removed are available for taxing purposes by the state, the questions pre-
76 sented to us appear to have been assumed rather than considered at length, yet we believe after a full consideration of the authorities that Judge Campbell is amply sustained in the conclusion to which he came. The people of the state in the adoption of the terms of the Enabling Act in effect have disclaimed any right or authority to limit or affect the power of the government to make any law or regulation respecting Indians, their lands, property or other rights which the government might have made, had the territory embracing the same not been created into a state, and has held as exempt the property of the Indians in accordance with the treaties or Federal laws relating thereto during the force and effect of the same. So that the general laws relating to the taxation of all property within the state for the purposes of state and municipal government under the provisions of the Enabling Act and the constitution, were suspended from operating upon these lands so long as they were held inalienable and exempt from taxation by the laws of Congress. On Oklahoma coming in as a state it yielded the right to the Federal government to legislate as to this property of either absolving it from taxation or by removing the exemption, thereby bring- it within the operation of the general taxing system of the state. When, therefore, Congress acted and the exemption was re-

moved, the state's power to tax by operation of law immediately attached. This, it occurs to us, is the extent, force and effect of the provisions of the Enabling Act and the constitution. The state entered into no contract with the Indian Tribes or the members thereof. It made no agreement, and it received naught from them as a consideration for the relief which they here demand. Its sole contract in reference to these matters was with Congress wherein it agreed that it would recognize and respect its legislation. So long as Congress maintained the laws under which these lands were exempt, the state under this agreement was required to recognize the same, but when Congress repealed them, and rendered the lands the same as those of all other citizens of the state, there was
77 no broeken pledge on its part when it enforced the same laws with reference to these lands that it did on those of all others.

But, it is contended that before there was a state, the members of these tribes and the allottes, had taken title to these lands under and by virtue of the terms of a valid contract; that the right of exemption from taxation was a vested property right growing out of a compliance on the part of these plaintiffs with the terms of that contract of which Congress lacked the power to strip them. It must be conceded that the treaties under which the lands were allotted, so far as they were legislative in character, were merely statutes. Hence a statute conflicting therewith subsequent thereto superseded them. Horner v. United States et al., 143 U. S. 570, 36 Law ed. 266; The Cherokee Tobacco, 11 Wall. 616, 20 Law Ed. 227; Thomas et al. v. Gay et al., 169 U. S. 264, 42 Law ed. 740; Stephens et al. v. Cherokee Nation, 174 U. S. 445, 43 Law ed. 1041; Lone Wolf et al. v. Hitchcock, 187 U. S. 553, 47 Law ed. 299.

Speaking to this general question, the Supreme Court of the United States in the case last cited, (Lone Wolf et al. v. Hitchcock), said:

"Plenary authority over the trial relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations (Chinese Exclusion Case, 130 U. S. 581, 609, 32 L. ed. 1068, Lo. 73, 9 Sup. Ct. Rep. 623), the legislative power might pass laws in conflict with treaties made with the Indians. (Citing authorities) * * * The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly

if consistent with perfect good faith towards the Indians. In United States v. Kagama (1885) 118 U. S. 375, 30 L. ed. 228, 6 Sup. Ct. Rep. 1109, speaking of the Indians, the court said * * * 'The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary
78 to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else, because the theater of its exercise is within the geographical limits of the United States, because it has never been denied, and because it alone can enforce its laws on all the tribes.' That Indians who had not been fully emancipated from the control and protection of the United States are subject, at least so far as the tribal lands were concerned, to be controlled by direct legislation of Congress, is also declared in Choctaw Nation v. United States, 119 U. S. 1, 27, 30 Law ed. 306, 314, 7 Sup. Ct. Rep. 75, and Stephens v. Choctaw Nation, 174 U. S. 445, 483, 43 Law ed. 1041, 1054, 19 Sup. Ct. Rep. 722."

Whether the act removing restrictions and subjecting these lands to taxation was one in perfect good faith towards the Indians, is a question which should be addressed to Congress for as we view the same, unless there was a valid contract, the power under all the authorities existed. At the time of the making of the treaties and passage of the acts of Congress within which the exemptions referred to are provided for, Congress was vested with the full authority to fix the terms of the same. As was held by the authority from which we last quoted, Congress from the beginning has exercised plenary authority over the tribal relations of Indians. Not only has this power been exercised over the tribal affairs, but it is extended to the property of the members and the disposition thereof, its tenure, title, and all rights growing out of it. The individual interest therein which has been given has been by virtue of its plenary legislative authority and the interest and title withheld has been under the same power. For, as was said by Judge Hook in Ligon, et al. v. Johnston et al., 164 Fed. 670: "The disposition of the tribal property of the Indian tribes falls within the legislative domain, the power of Congress is supreme, and its action is conclusive upon the courts," citing Cherokee Nation v. Hitchcock, supra, and Lone Wolf v. Hitchcock, supra. See also Hayes v. Barringer, 168 Fed. 221, and Wallace, et al. v. Adams et al., 143 Fed. 716. Therefore, being vested with the plenary authority there was naught in the nature of a consideration possessed by the members of the different tribes, which they could yield to Congress as a basis for the claim which is made in this and kindred cases, and in order to enforce a
79 claim of exemption from taxation, the same necessity for a proper consideration exists as if the contract were between private parties. Grand Lodge of the State of Louisiana v. New Orleans, 166 U. S. 143, 41 Law ed. 951. This case was one wherein the Grand Lodge of F. & A. Masons of the state of Louisiana purchased and owned a certain hall in the city of New Orleans. In 1855, the legislature of the state provided by an act for the exemption of said hall from city and parish taxation so long as it was

occupied by said lodge. In 1879, a new constitution was adopted by the state of Louisiana under which the same was made taxable, and the authorities proceeded thereunder to tax and sell the said property for the taxes. The lodge brought an action seeking to restrain the collection and the United States Supreme Court held that the act did not constitute a contract and that the property was subject and liable to taxation.

The case of County of Stanislaus et al. v. San Joaquin & King's River Canal etc. Co. 192 U. S. 201, 48 Law ed. 406, was one wherein the defendant in error sought to have held invalid a certain law under which its income from its water rates was sought to be curtailed. In 1862 the California legislature passed an act for the organizing of water companies and provided that the rents or tolls of the same should be subject to regulation by a board of supervisors of the county in which they were situated but that they should not be reduced so low as to fall to yield the stockholders less than one and one-half per cent per month upon the capital actually invested. This company built its casual canal while this law was in force and effect. Thereafter and in 1885, the legislature passed an act relating to the same subject which provided under its operation for a substantial reduction of the rates claimed under the original act. The Supreme Court of the United States, speaking through Mr. Justice Peckham, held that the company had no contract and said:

89 "In our belief, the language of the act of 1862 does not and was not intended to form a contract, but simply amounted to the statement of the then pleasure of the legislature, to so remain until subsequently altered by it."

The case of Welch v. Cook et al., 7 Otto, 541, 24 Law ed. 1112, arose in the District of Columbia. In 1873 the legislative assembly of that District passed an act providing that "all property, real and personal, which may hereafter be actually employed within the limits of the District of Columbia for manufacturing purposes, shall be exempt from all general taxes for a period of ten years from the date of this act going into effect: Provided, that the value of the property so employed for manufacturing purposes shall not be less than $5,000." Thereafter and on June 20, 1874, Congress repealed the said act. Plaintiff brought his action alleging that on the faith of the act of the legislative assembly he had expended large sums of money in improving his property which was within the provisions of the tax exempting act and that in pursuance of said law the commissioners exempted the same for the year ending June 1874, but were about to sell the same for taxes for the year 1875 under the act of Congress above mentioned. The court held that no contract was created, that the act was a bounty law which was good as long as it remained unrepealed, but that there was no pledge that it should not be repealed at any time.

In the case of Christ Church v. Philadelphia County, 24 How. 300, 16 L. ed. 602, it appeared that in 1833, the legislature of Pennsylvania passed an act which exempted Christ Church Hospital in the city of Philadelphia, providing, "that the real property, including ground rents, now belonging and payable to Christ Church Hos-

pital in the city of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes." In the year 1851, this act was partially repealed and a portion of the real property previously exempted was taxed. Suit was brought to restrain the same and when the case reached the Supreme Court of the United States, it was disposed of in an opinion by Mr.
81 Justice Campbell, wherein it was said:

"The plaintiffs claim that the exemption conceded by the Act of 1833 is perpetual, and that the Act itself is in effect a contract. This concession of the Legislature was spontaneous, and no service or duty or other remunerative condition was impo-ed on the corporation. It belongs to the class of laws denominated privilegia favorabilia. It attached only to such real property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual, or was designed to continue during the corporate existence. Such an interpretation is not to be favored, as the power of taxation is necessary to the existence of the state, and must be exerted according to the varying conditions of the commonwealth. The Act of 1833 belongs to a class of statutes in which the narrowest meaning is to be taken which will fairly carry out the intent of the legislature. * * * It is in the nature of such a privilege as the Act of 1833 confers, that it exists bene placitum and may be revoked at the pleasure of the sovereign."

The case of Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 379, 48 Law ed. 229, likewise involved a claim somewhat similar to the one in the case at bar. May 27, 1893, the legislature of Michigan provided in an act for levying a specific tax on railroads, that the same nor any other law of that state should not apply to any railroad company thereafter building or operating a line of railroad within the state north of a certain parallel, until the same had been operated for a full period of ten years, unless the gross earnings equal-ed $4,000 per mile. Thereafter a railroad company constructed a road north of the parallel, and its gross earnings never equal-ed $4,000 per mile and it would have been entitled to the ex*me*ptions stated if the law mentioned was in force. In 1897 the state legislature passed an act amending the previous act and under it taxed this road. To a bill setting up these facts a demurrer was filed. In sustaining the power to tax, the Supreme Court of the United States held that no contract, exempting from taxation was made by the act of 1893, and that the levy made was valid.

Two other cases similar to the foregoing are those of Tucker et al. v. Ferguson et al. 22 Wall. 527, 22 L. ed. 805, and West Wisconsin Ry. Co. v. Board of Supervisors, etc. 3 Otto, 595, 23 Law ed. 814.
In the former, the court held that "a provision in a state
82 act, exempting lands specified from local taxation for three years, was not a contract." And in the latter case it was held that "an exemption from state taxation, which is a mere gratuity, may be withdrawn whenever the state thinks it best for the public welfare." Both of these case- involve the question of whether a contract was created between the state and certain rail-

roads which were built under the provisions of acts of the legislature exempting certain of their lands from taxation for various periods. In the case last noted it appeared that in 1864 the legislature of Wisconsin passed an act which declared that when the title to the lands in question should become vested in the company they should be exempt from taxation for ten years from the passage of the act. In 1870 the exemption from taxation was further extended for ten years, the company during this time being engaged in the construction of a railway and selling bonds thereon, upon the faith of the inviolability of the alleged contract exempting its lands from taxation. In 1871, this act was so amended that certain lands of the company were rendered liable for taxation. The company insisted that the lands having been mortgaged pursuant to the first act and the road having been completed within the time limited within the second, there was created a contract protected by the contract clause of the constitution of the United States and that the acts abrogating the exemption were therefore void. In the discussion of the case Mr. Justice Swayne who prepared the opinion for the court, said:

"One who has examined this case cannot look through Tucker v. Ferguson, as reported, without being struck with the similarity of the points and arguments, as well as the substantial identity of the facts, in the two cases. The latter case was carefully considered in all its aspects by this court. It is unnecessary to reproduce at length the views then expressed. In that case we said, 22 Wall., 575: 'The taxing power is vital to the functions of government. It helps to sustain the social compact, and to give it efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists, it is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right, and narrows a trust created for the good of all.'

83 We hold here, as we held there, that the exemptions in question were gratuities, offered by the state, without any element of a contract. There was no assurance or intimation that they were intended to be irrevocable, or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. If a different intent had existed, it would doubtless, have been clearly manifested by the language employed. It would not have been left to encounter the possible results of such a struggle and conflict as have occurred in this litigation."

The leading case upon which counsel for plaintiffs in error rely is that of State of New Jersey v. Wilson, 7 Cranch, 164 3 Law ed. 303. In that case it appears that the remnant of the tribe of Delaware Indians previous to the year of 1758, had claims to a considerable portion of the lands in New Jersey, to extinguish which became an object with the government and proprietors under the

conveyance from King Charles 2d, to the Duke of York. To accomplish this the government of New Jersey appointed commissioners to make a treaty with the Indians. An agreement was entered into whereby the Indians released their claim to all lands in New Jersey south of the river Rariton, and took other lands in lieu thereof. Effect was given to this agreement by an act of the legislature which provided, "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof, in any wise notwithstanding." Thereafter, in 1804, the legislature of the state of New Jersey passed an act repealing the provisions of the act which exempted the lands from taxation. On the lands being taxed, suit was brought to restrain the same and the Supreme Court of the United States held that a valid enforcible contract had been entered into between the Indians and the government of New Jersey which was not subject to abrogation by any subsequent legislation. It occurs to us that there is a difference in the situation there presented from that in the case at bar. The Indians in that case traded lands which they owned or on which they had recognized claims, for other lands owned or purchased for them by the state government. This was virtually an exchange of one property which they possessed for other property which they did not possess, and as was found
84 in the case, every requisite to the formation of a contract was found in the proceeding. No claim was made or recognized that the government had power to compel this exchange or that it could have been made otherwise than by and through a mutual covenant. The state secured from the Indians that which it did not possess before, to-wit, the lands which they owned, and the Indians took in lieu thereof, that which the state owned, to-wit, certain other lands which was attached the exemption from taxation. The pleadings before us as we view them disclose a situation quite different. The title to the lands of the Five Civilized Tribes was held by them in fee with a reversionary interest in the government of the United States. The plenary power of the government to deal with the tribal affairs and property of these races is not an open question. Their governments existed so long as Congress permitted them and when in the course of time it became obvious that statehood was approaching and could not longer be delayed, acts were passed looking to the division of the tribal property in severalty among the members. To accomplish this it was provided that a roll of the members should be made and that they should share equally in the tribal property. This involved necessarily a yielding on the part of each, when he took his separate portion of any claim on his part to the portions taken by the other members, they in their turn yielding any claim on his. Herein is involved the consideration which it is claimed was granted by the members of the tribes for the exemption from taxation contained in the allotment acts. The right or at least the power to deny consent to this program did not exist in the tribes and when it was yielded, naught was secured by Congress which it did not have prior thereto.

Speaking to this point, the Supreme Court of the United States in 1904, through Mr. Justice Brewer, in the case of Re Hoff, 197 U. S. 488, 49 Law ed. 848, said:

85 "Of late years a new policy has found expression in the legislation of Congress,—a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes, free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one sui juris. And it is for Congress to determine when and how that relationship of guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended, and courts may wisely insist that the purpose of Congress be made clear by its legislation; but when that purpose is made clear the question is at an end.

And, in a case of this character, to secure immunity from taxation, it must be based on a contract and the existence thereof must be free from doubt, for, as was said in the case of West Wisconsin Ry. Co. v. Board of Supervisors, etc., supra,

"A reasonable doubt, as to whether an exemption claimed amounts to a contract, is fatal to the claim. Prima facie every presumption is against it."

If in closing the affairs of the Five Civilized Tribes, Congress had the legal authority and power to have and made the provisions it did make without providing for the exemptions here claimed, then the granting thereof was a mere gratuity which could be revoked at its will; if the tribes or the members thereof yielded nothing which Congress did not already possess, then there is lacking the very essential element, consideration, to make of this statute a legislative contract. The existence of the former and absence of the latter condition we believe must be found, and if so, forecloses plaintiffs' claims. Oklahoma,—as did the state of Washington, referred to — the case of Goudy v. Meath, 203 U. S. 146, 51 Law ed. 130, granted to Congress the power to determine how long this exemption from taxation should exist and when Congress released it, then it was released as to the state.

In the consideration of a law, all doubts are to be resolved in favor of its constitutionality. When it is attached if a doubt exists it must be resolved in its favor. The act is a Federal statute,

86 and has been held valid by the Federal Court sitting within the jurisdiction where these lands lie, and this conclusion is strongly persuasive with us. We do not and cannot sit in judgment on the policy of the law; our duty begins and ends with a determination of its validity—all other consideration must be addressed to the political, and legislative departments of the state and nation. And, as was said by Mr. Justice Swayne in the case of West Wisconsin Ry. Co. v. Board of Supervisors, etc., supra:

"We hold the conclusion we have announced to be the law of this case. With its ethics we have nothing to do. That subject is not open to our consideration."

Finding, therefore, as we do that the act is constitutional, the judgment of the trial court is sustained.

Turner, C. J. Williams and Hayes, JJ., concur; Kane, J., dissents.

87 The Supreme Court of the State of Oklahoma.

In Equity.

UNITED STATES OF AMERICA,
State of Oklahoma, ss:

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ISADORE James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker, Plaintiffs in Error,

vs.

J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey, County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John H. Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtin County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County, Oklahoma, Defendants in Error.

I, W. H. L. Campbell, Clerk of the Supreme Court of Oklahoma, do hereby certify that the foregoing 86 pages, numbered from 1 to 86, both inclusive, are a full, true and complete transcript of all the pleadings, proceedings, and record entries in cause No. 1877, in which Michael H. Gleason, Minnie Love, Henry McGee, Isadore James, David Folsom, Winnie R. Spring, Ola M. Shaw, Sam B. Wright, Albert P. Turner, Thomas Danenhour, and Jackson Baker are plaintiffs in error, and J. I. Wood County Treasurer of Pittsburg County, Oklahoma; M. P. Rainey County Treasurer of Hughes County, Oklahoma; Henry J. Bond, County Treasurer of Atoka County, Oklahoma; Paterick Greenan, County Treasurer of Coal County, Oklahoma; John C. Evans, County Treasurer of Latimer County, Oklahoma; John Hinton, County Treasurer of Leflore County, Oklahoma; J. E. McBrayer, County Treasurer of Haskell County, Oklahoma; Joe B. Thurston, County Treasurer of McCurtain County, Oklahoma; J. W. Amend, County Treasurer of Pushmataha County, Oklahoma; E. P. James, County Treasurer of Bryan County Oklahoma; A. J. Stein, County Treasurer of Choctaw County Oklahoma; are defendants in error, in the above Court, as fully as the same

remain on file and of record in my office at the City of Oklahoma, State of Oklahoma.

And, I further certify that the original writ of error with the Clerk's return thereto and the original citation with the acceptance of service thereon and a copy of the opinion of the Supreme Court filed in said Cause are each hereto attached and herewith returned.

In witness whereof, I hereunto set my hand officially and affix the seal of said Supreme Court of Oklahoma City, this 17" day of April, 1911.

[Seal Supreme Court, State of Oklahoma.]

W. H. L. CAMPBELL,
Clerk Supreme Court, State of Oklahoma.
By JESSIE PARDOE, *Deputy.*

Endorsed on cover: File No. 22,638. Oklahoma Supreme Court. Term No. 575. Michael H. Gleason, Minnie Love, Henry McGee et al., Plaintiffs in error, vs. J. I. Wood, County Treasurer, of Pittsburg County, Oklahoma et al. Filed April 25th, 1911. File No. 22,638.

Supreme Court, U. S.
FILED
OCT 9 1911
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 575.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ET AL., PLAINTIFFS IN ERROR,

vs.

J. L. WOOD, COUNTY TREASURER OF PITTSBURG COUNTY, OKLAHOMA, ET AL, DEFENDANTS IN ERROR.

MOTION TO ADVANCE NO. 575 TO BE HEARD WITH CAUSE NO. 598.

CHAS. WEST,
Attorney General of the State of Oklahoma,
Attorney for Defendants in Error.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 575.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ET AL., PLAINTIFFS IN ERROR,

vs.

J. I. WOOD, COUNTY TREASURER OF PITTSBURG COUNTY, OKLAHOMA, ET AL, DEFENDANTS IN ERROR.

MOTION TO ADVANCE NO. 575 TO BE HEARD WITH CLAUSE NO. 559.

Come now J. I. Wood and the other appellees herein and show to this court that there is involved

in this action practically the same question as that involved in the case of English vs. Richardson, No. 559 of this term, and the case of Choate, et al, vs. Trapp, etc., of this term, to-wit, the question of the meaning and constitutionality of the Act of Congress of May 27, 1908, entitled "An Act for the Removal of Restrictions from Part of the Lands of Allottees of the Five Civilized Tribes, and for other purposes," and whether said lands are subject to taxation in the State of Oklahoma; that said cause No. 559 involved the question of the application of said laws to the lands of the Muskogee or Creek Tribes; that this action involves the application of said laws to the lands of the Choctaw Tribe of Indians; that the action of Choate, et al, vs. Trapp, etc., involves the application of said law to the Choctaw and Chickasaw Tribes of Indians, and for this reason appellees move that this action be advanced for hearing and set for hearing at the same time as case No. 559, English vs. Richardson, supra.

Charles West

Attorney General of the State of Oklahoma,
Attorney for Defendants in Error.

FEB 14 1912

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1911.

NO. 575.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ET AL., Plaintiffs in Error,

vs.

J. I. WOOD, COUNTY TREASURER OF PITTSBURG COUNTY, OKLAHOMA, ET AL., Defendants in Error.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

W. L. STURDEVANT,
DAVID C. McCURTAIN,
EDWARD P. HILL,
Attorneys for Plaintiffs in Error.



SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1911.

NO. 575.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, ET AL., Plaintiffs in Error,

vs.

J. I. WOOD, COUNTY TREASURER OF PITTSBURG COUNTY, OKLAHOMA, ET AL., Defendants in Error.

BRIEF AND ARGUMENT OF PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

The plaintiffs in error, Michael H. Gleason, Minnie Love, Henry McGee, and others, are citizens of the Choctaw Tribe of Indians, which is one of the Five Civilized Tribes. Under the Atoka Agreement of June 28, 1898, (Sec. 29, 30 Stat., L. 505) as amended by the Supplemental Agreement of July 1, 1902, (32 Stat., L. 641), commonly referred to as the Curtis Act and Choctaw-Chickasaw Supplemental Agreement, they each received an allotment of the Choctaw tribal lands, designated as

homestead and surplus lands, receiving a separate deed for each, which said deeds were duly recorded as provided by law, said deeds or patents having been delivered to plaintiffs long prior to the Act of Congress approved May 27, 1908, (35 Stats. p. 312) under which it is sought to subject said lands to taxation; that said Curtis Act of June 28, 1898, (Sec. 29, 30 Stat. L. 505) contained a stipulation that allotted lands should be nontaxable while the title remains in the original allottee, but not to exceed twenty-one years from the date of patent, and that the patents or deeds executed and delivered to plaintiffs in error as aforesaid, were in strict conformity to said Curtis Act and said Supplemental Agreement. (Trans. pp. 18-20.)

On the 24th day of September, 1909, while the plaintiffs in error still owned and occupied their said allotments, being their distributive share and proportion of the lands of the Choctaw Tribe of Indians, and while the title to same still remained in them as original allottees, the county officers of Oklahoma, in Pittsburg and other counties where the lands of plaintiffs in error were situate, charged with such duties under the state law, levied and assessed a tax for state and county purposes upon said allotted lands, and threatened to advertise and sell same to satisfy said tax levy. (Trans. Sec. 11, pp. 20-21).

On Dec. 5, 1909, plaintiff in error commenced an

action in the superior court of Pittsburg County, Oklahoma, against the defendants in error, to enjoin the collecting of said taxes so levied and from selling or attempting to sell said allotments, and to clear the title thereof from the cloud of the levy and the assessment made thereon, by original petition filed on that day (Trans. pp. 32-33-34) and amended petition filed June 24, 1910 (Trans. p. 13 et seq.).

The main grounds relied on by plaintiffs in error for the injunction sought were that under the said agreements, and acts of congress ratifying same, the lands allotted to them and for which they recieved patents, were exempt from taxation while the title to same remained in them for a period of twenty-one years from the date of their respective patents, and especially was this true of the plaintiffs in error, they having received their deeds to their allotments and taken possession of same long prior to the Act of Congress which sought to tax them; that said agreements and Acts of Congress exempting their allotments from taxation, were binding upon the state of Oklahoma, and that the rights of plaintiffs in error thereunder could not be violated and their exemption privileges destroyed without compensation, and that neither the legislature of the state of Oklahoma nor the National Congress had power to deprive them of such rights, etc., etc.

A general demurrer was filed to the petition by T.

R. Dean, county attorney, Charles West, Attorney General, and Chas. L. Moore, assistant Attorney General, attorneys for defendants in error (Trans. pp. 34-35).

Subsequently, after argument, the court entered an order sustaining the said demurrer and rendering judgment against plaintiffs for costs. (Trans. pp. 35-36.) From the judgment of the court sustaining the demurrer, plaintiffs in due course perfected their appeal to the Supreme Court of the state of Oklahoma.

Thereafter the judgment of the lower court was affirmed by the said Supreme Court. (Trans. p. 45 et seq.)

To review the decision of the Supreme Court of Oklahoma sustaining the ruling of the lower court in this case, this writ is prosecuted.

The plaintiff contends that the allotted lands of the Choctaw tribe of Indians cannot be taxed so long as the title remains in the original allottee, not to exceed twenty-one years from the date of the patent; that in 1898 the United States Government, through its duly accredited representatives, "in consideration of the mutual undertakings, herein contained," among other things, agreed with the Choctaw nation (and other tribes) as follows:

> "All the lands allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from the date of patent." (Sec. 29, Act of Congress, Atoka Agreement, June 28, 1898, 30 Stat. L. 505.)

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This agreement was ratified by a vote of the Choctaw people. Its provisions were observed by them, and the plaintiff contends that the facts established a contract between the Federal government and the allotted members of the Choctaw tribe of Indians, by the terms of which their lands were to be exempt from taxation as stated therein and further that said exemption from taxation is not a gratuity or privilege but a property right, based upon a sufficient consideration, accepted by both parties, and the same cannot be taken away by subsequent legislation.

The constitution of the State of Oklahoma, adopted in 1907, several months prior to the passage of the Act of Congress of May 27, 1908, and while the Act of June 28, 1898, above quoted, was still a law, provides as follows:

> "All property owned * * * * * shall be exempt from taxation, and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States Government, or by Federal laws, during the force and effect of such treaties or Federal laws."

(Sec. 6, Art. 10, Const. of Oklahoma.)

Plaintiff further contends that this section of the Oklahoma constitution, above quoted, exempting the property of Indians from taxation which was exempted by Federal laws, was recognition by the State of Oklahoma of the Act of Congress of June 28th, 1898, and con-

stituted a contract between the State of Oklahoma and plaintiff, which could not be abrogated by subsequent Act of Congress.

On May 27, 1908, Congress passed an Act as follows:

> "That all land, from which restrictions have been or shall be removed, shall be subject to taxation, and all other civil burdens, as though it were the property of other persons than allottees of the five civilized tribes." (35 Stats. p. 312).

The only basis for the validity of this Act of Congress as contended for by the defendant is the "plenary power and control" of Congress over the property and person of the Indian tribes, and the assertion of this power over individual Indians and their property which is not tribal to the extent of taking private property or destroying vested rights established by valid contract or law is an unlawful exercise of legitimate governmental authority.

However, in view of the importance of this matter to both the members of the Choctaw tribe of Indians and the State of Oklahoma, and in order that the Court may get clearly before it all the issues in this case, we take the liberty of incorporating the material sections of plaintiff's petition as follows:

> "Plaintiffs state that they, and those for and in behalf of whom they bring this suit, each and

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all of them, are members and citizens of the Choctaw Tribe of Indians, which is one of the Five Civilized Tribes of Indians, and each and all of them are citizens of the United States and the said State of Oklahoma; that on the 25th day of September, 1902, they were duly enrolled as members of the said Choctaw tribe of Indians by the proper authorities, duly authorized under the laws of the United States to compile and publish an official roll of the citizens and members of the said tribe, who were then in charge of such enrollment, and that the names of the plaintiffs and those for and in behalf of whom they bring this suit, now appear upon the official record thereof on file in the office of the Commission to the Five Civilized Tribes; that the plaintiffs themselves and each and all of those for whom they bring this suit, are members and citizens of said tribe and were at all times hereinafter mentioned and now are entitled to all the property, rights, privileges and benefits arising therefrom, and have an interest in all the communal property of the said tribe of Indians of every kind and description incident to and arising from such membership and citizenship in the said tribe; that prior to the allotment of the land and property in severalty to the various citizens thereof, as hereinafter stated, each citizen, including the plaintiffs and those for and in behalf of whom they bring this suit, had and possessed an equal undivided interest therein with every other citizen and at no time and in no manner did these plaintiffs and those for whom they sue, ever forfeit or relinquish any of said rights prior to the time of receiving the allotment of lands as herein below stated."

"Plaintiffs further state that by virtue of a treaty duly entered into between the Government of the United States and the said Choctaw tribe of Indians on the 15th day of September, 1830, and duly ratified by the Senate of the

United States on the 27th day of September, 1830, and a Supplemental Treaty entered into on the 15th day of September, 1830, by the same parties and likewise duly ratified by the Senate of the United States on the 28th day of September, 1830, and a patent issued to the said Choctaw Tribe of Indians in pursuance thereof bearing date of March 23, 1842, the said tribe became the owner in fee simple of all that tract of land in the said treaties described located in the then unsettled Indian Territory, now comprising all of nine, and a part of two others, of the large counties of the present State of Oklahoma; that under the provisions of the said treaties between the Government and said tribe, the Government, in recognition of its obligation to an inferior and dependent race with which it had concluded negotiations for the exchange of the above lands for other lands then owned by said tribe east of the Mississippi River, agreed and undertook to protect the said tribe in its undisturbed ownership and occupancy of the lands so conveyed to it as its new home and future abiding place; that the obligation so assumed by the Government contemplated the preservation of such lands for the exclusive use and benefit of the said tribe, all the members thereof and their descendants, and to protect the Indian against his own improvidence and to secure him a fixed home, all as expressed in said treaty and the patent made in pursuance thereof, the said lands and all parts thereof were made inalienable and were never subject to conveyance, incumbrance, liens, judgments or charges of any character whatever, and in that condition so remained under the said guarantee and protection of the United States until modified by an agreement between the United States and said tribe as hereinafter set forth."

"Plaintiffs further state that, yielding to urgent and repeated requests on the part of the

government and the persistent importunities of white settlers who had already become numerous, and were daily becoming more numerous, among the Indian population, the tribe consented to enter into negotiations with the Government having for their purpose the partition of all tribal lands and property; and the distribution of same among the individual members of the tribe in severalty."

"Plaintiffs further state that thereupon, towit, on the 23rd day of April, 1897, the Commission to the Five Civilized Tribes representing the Government in convention with the fully constituted representatives of both the Choctaw and Chickasaw Nations or tribes of Indians, concluded an agreement at the city of Atoka in the Indian Territory, the said Choctaw tribe being represented in said convention by Green McCurtain, Principal Chief, J. S. Standley, N. B. Ainsworth, Ben Hampton, Wesley Anderson, Amos Henry and D. C. Garland and the said Chickasaw tribe by R. M. Harris, Governor, Isaac O. Lewis, Holmes Colbert, Robert L. Murray, William Perry and R. L. Boyd, to negotiate an agreement between the United States of America on the one part and the said Nations or Tribes of Indians upon the other part as the contracting parties, such convention and agreement having as its purpose the partition of the tribal property of the said Nations or Tribes and the allowment of lands as aforesaid; that on the said date when the said agreement was concluded the said Tribes of Indians were the owners in fee simple of all the lands above mentioned in the said patent conveyed subject only to the conditions aforesaid; that under the express terms of said agreement each citizen and member of said tribes was entitled to an allotment of a portion of the said tribal lands."

"Plaintiffs further state that having in

view the long standing obligation of the Government to the Tribes, as so expressed in said treaty and patent arising from the guardianship which the Government exercised over the Indian and his affairs, and recognizing that the welfare of the Indian in the unequal race with the white man which he was about to enter, demanded a continued protection in the undisturbed use and enjoyment for a limited time of the portion of property which would fall to each as an allotment and as an inducement and consideration to the individual Indians of the tribes to accept each his allotment of the tribal—allotted and to be allotted, it was provided by the said convention and stipulated in the agreement entered into, among other things, that the lands so allotted to the individual members of said tribes should be non-taxable while the title remains in the original allottee but not to exceed twenty-one years from the date of patent: the said agreement so far as it relates to such exemption being in words and figures as follows, to-wit:

"All the land allotted shall be non-taxable while the title remains in the original allottee, but not to exceed twenty-one years from date of patent, and each allottee shall select from his allotment a homestead of one hundred and sixty acres for which he shall have a separate patent, and which shall be inalienable for twenty-one years from date of patent."

That said agreement was enacted into law by Act of Congress approved June 28, 1898, and was duly ratified by a majority of the whole number of the vote cast by the members of the said tribes at an election held for that purpose on the 24th day of August, 1898, such date being prior to the 1st day of December, in said year."

"Plaintiffs further state that in pursuance of said agreement, Act of Congress satisfying

same, and the vote of the members of the Choctaw tribe also ratifying same as aforesaid, these plaintiffs in conformity with all the laws, regulations and rules prescribed with reference thereto fully made selection of an allotment as provided in said agreement of their distributive share and proportion of the lands allotted and to be alloted, under the said agreement and did duly select from each allotment a homestead as provided therein and did substantially receive a separate deed for said homestead and also a deed for the surplus land so selected by them, the deed for their said surplus land so received being recorded and of record in the office of the Commissioner to the Five Civilized Tribes, in book of allotment patent record, and the deed for their said homesteads being recorded and of record in the office of the Commissioner to the Five Civilized Tribes in Book 4 of Homestead patent records."

"Plaintiffs further state that they, and those for whom they sue, are enrolled members and citizens of the Choctaw tribe of Indians and that their status as such is fixed and determined by the roll of citizens of said tribes duly approved by the Secretary of the Interior according to law, all of which appears of record in the office of the Commissioner to the Five Civilized Tribes, and that a certified copy of the patents both homestead and surplus, duly issued to them are attached hereto, made a part hereof and that certificates of enrollment, showing their number, name, age, sex, and blood, are hereto attached and made a part hereof."

"Plaintiffs further allege that the people of Oklahoma in pursuance of an Act of Congress, approved June 16, 1906, as amended by Act of Congress, approved March 4, 1907, commonly called the Enabling Act, duly adopted as provided therein a constitution for the proposed state of Okla-

homa, which constitution under proclamation of the President of the United States, bearing date of November 16, 1907, was declared to be in conformity with the Enabling Act and then and therefrom became of binding force and a fundamental law of the State of Oklahoma; that section 270 of the said constitution adopted and proclaimed as aforesaid, contains, among other things, the following provisions:

"All property owned by —— ——, etc., shall be exempt from taxation and such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States Government or by Federal laws, during the force and effect of such treaties or Federal laws."

That the said constitution was adopted by the people of Oklahoma, proclaimed and became a law long after the making of the treaties and the passage and approval of the laws aforesaid under which restrictions were placed upon the allotment of Choctaw Indians, including these plaintiffs, as heretofore alleged, and that the said laws imposing restrictions upon such lands as aforesaid were subsisting and valid laws at the time the said constitution was adopted and that because of such laws and treaties and the said provision of the constitution of Oklahoma the allotments of the plaintiffs and those for whom they sue are exempt from taxation and not subject to levies, charges or assessments under any laws of the State of Oklahoma, or of the United States."

"Plaintiffs further state that, notwithstanding the foregoing covenants and agreements, an Act of Congress, approved May 27, 1908, entitled "An Act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes and for other purposes" was

passed which provided in Section 1 thereof, among other things, as follows:

"That from and after sixty days from the date of this Act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes, shall, as regards restrictions on alienation or incumbrance, be as follows:

All lands, including homesteads, of said allottees, enrolled as inter-married whites, as freedmen, and as mixed blood Indians, having less than half Indian blood including minors shall be free from all restrictions."

and it is further provided, among other things, in Section 4 of said Act as follows:

"That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of other persons than allottees of the Five Civilized Tribes."

And plaintiffs state that they and those for whom they sue, are members of the Choctaw tribe of Indians, and Choctaw citizens, and enrolled as of September 25, 1902, and are among the number of those from whose allotments restrictions were removed by the above provision of Section 1. But the plaintiffs state and aver that said Act of Congress, and more particularly the said provision of Section 4 thereof, in so far as the same attempts to deprive these plaintiffs of the exemption, right, privilege, franchise, grant and immunity guaranteed and covenanted to him in the said agreements, Act of Congress and deeds aforesaid, would impair the obligation of the said contract and agreement and is, therefore, unconstitutional and void being in violation of and repugnant to Section 10 of Article 1 of the Constitution of the United States; and is further uncon-

stitutional and void for the reason that it would deprive these plaintiffs of their property, interest and property right in violation of the 5th and 14th amendments to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law.

Plaintiffs further allege that the covenants and agreements entered into between the said Choctaw tribe of Indians and the Government of the United States, approved by Congress as aforesaid and duly ratified by a vote of the members of said tribe, all as heretofore alleged, have been, since said date, and are now, in full force and effect and that the same have never been repealed, modified or abrogated by any agreement of said tribe or by any law of the United States with the consent, approval or ratification of the said tribe or these plaintiffs; that the exemptions guaranteed to these plaintiffs are still in force and effect and that the rights, exemptions and benefits guaranteed to them are of great value and are inviolate."

"Plaintiffs further state that the defendant, J. I. Wood, is the duly elected, qualified and acting treasurer of Pittsburg County, Oklahoma; that M. P. Rainy is the duly elected, qualified and acting treasurer of Hughes County, Oklahoma; that Henry J. Bond is the duly elected, qualified and acting treasurer of Atoka County, Oklahoma; that Patrick Greenan is the duly elected, qualified and acting treasurer of Coal County, Oklahoma; that John C. Evans, is the duly elected, qualified and acting treasurer of Latimer County, Oklahoma; that John J. Hinton is the duly elected, qualified and acting treasurer of Le Flore County, Oklahoma; that J. E. McBrayer is the duly elected, qualified and acting treasurer of Haskell County, Oklahoma; that Joe B. Thurston is the duly elected, quali-

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fied and acting treasurer of McCurtain County, Oklahoma; that J. W. Amend is the duly elected, qualified and acting treasurer of Pushmataha County, Oklahoma; that E. P. James is the duly elected, qualified and acting treasurer of Bryan County, Oklahoma; that A. J. Stein is the duly elected, qualified and acting treasurer of Choctaw County, Oklahoma; that heretofore, to-wit, on the — day of —— 1909, the regularly constituted officers in each of the above named counties in which the hereinafter lands are situated, charged with the duties under the laws of Oklahoma of assessing and levying taxes for state and county purposes upon all taxable lands in their respective counties for the year 1909, did assess and levy taxes for the year 1909 against the lands and allotments belonging to the above named plaintiffs and described as follows, to-wit:

On the lands of Michael H. Gleason, located Pittsburg County, Oklahoma, and being: S. W. N. W. and N. W. S. W. N. W. and S. E. N. W. of Section 34, Township 6 North, Range 15 East.

The lands of Minnie Love, located in Bryan County, Oklahoma, and being: N. 1-2 of S. E. 1-4 of S. E. 1-4 of S. E. 1-4 of N. E. 1-4 of S. E. 1-4 Section 31, Township 7 South, Range 9 East.

The lands of Henry McGee, located in Hughes County, Oklahoma, and being: S. E. 1-4 of N. E. 1-4 and the E. 1-2 of the S. E. 1-4 of Section 5, Township 5 North, Range 10 East.

The lands of Isadore James, located in LeFlore County, Oklahoma, and being: S. 1-2 of the N. E. 1-4 of the S. W. 1-4 and S. W. 1-4 of the S. E. 1-4 and N. 1-2 of the S. E. 1-4 of the S. W. 1-4 of Section 12, Township 7 North, Range 26 East.

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The lands of Daniel Folsom, located in Haskell County, Oklahoma, and being: N. 1-2 of N. 1-2 of Section 34, Township 9 North, Range 20 East.

The lands of Winnie R. Spring, located in Choctaw County, Oklahoma, and being: N. 1-2 of S. E. 1-4 of N. E. 1-4 of S. E. 1-4 of S. E. 1-4 of N. E. 1-4 of Section 8, Township 6 South, Range 17 East.

The lands of Ola M. Shaw, located in Latimer County, Oklahoma, and being: The North 18.39 acres of Lot 2 and the S. W. 10 acres of Lot 2, Section 1, Township 4 North, Range 18 East.

The lands of Sam B. Wright, located in Pushmataha County, Oklahoma, and being: N. W. 1-4 of S. W. 1-4 of Section 14, Township 4 South and Range 16 East.

The lands of Albert P. Turner, located in Coal County, Oklahoma, and being: S. W. 1-4 of N. W. 1-4 of S. W. 1-4 of Section 12, Township 1 North, Range 8 East.

The lands of Thomas Dannenhour, located in Atoka County, Oklahoma, and being: S. E. 1-4 of S. E. 1-4 of Section 9, Township 2 South, Range 11 East.

The lands of Jackson Baker, located in McCurtain County, Oklahoma, and being: W. 1-2 of N. E. 1-4 of Section 20, Township 6 South, Range 21 East.

All of which said lands are a part of the tribal lands of the said Choctaw tribe of Indians allotted to the above named plaintiffs in pursuance of the laws and agreements aforesaid, and that the same

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are now and have been subject to the exemption from taxation imposed by the said laws and agreements and that the same are now and have at all times since these plaintiffs received their deeds therefor as aforesaid, owned by them as original allottees thereof, and that the title received by them by virtue of said deeds of conveyance have at all the times and are now vested in these plaintiffs and those for whom they bring this suit; that the said taxes so levied conconstitutes an incumbrance, charge and cloud upon the title of said allotments; that the said county treasurers heretofore named are now threatening and attempting to collect the said taxes and are threatening and attempting and about to involve these plaintiffs and those for whom they bring this suit, in additional large expense by way of penalties for delinquencies on their refusal to pay the same and have attempted and will attempt to institute proceedings to collect the said taxes and to sell the said allotments at public auction in satisfaction of the same, and unless restrained will do so, all to the very great damage and irreparable injury of these plaintiffs and those for whom they sue and in violation of their rights under the exemption aforesaid; and plaintifs further state and aver that the acts and conduct of the said defendants as aforesaid are without authority of law, illegal and void and that their said property is exempt from taxation and not subject to pay the taxes so assessed and levied upon and against it under any law of the State of Oklahoma, and that any law of the said state authorizing or attempting to authorize the taxation of the said allotments of these plaintiffs, or any part thereof, is in violation of the said exemption rights of these plaintiffs and in violation of the said section and amendment of the Constitution of the United States, and, therefore, void and of no force and effect."

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"Wherefore, the premises considered the plaintiffs pray for a permanent injunction against the said defendants aforesaid, each and all of them, perpetually enjoining and restraining them from collecting or attempting to collect said taxes, and from selling or attempting to sell or offering for sale the lands and allotments of the plaintiffs above described, and from issuing or attempting to issue any certificates of sale thereon, and from issuing or attempting to issue or execute deeds therefor under any sale or attempted sale thereof, and from filing or attempting to file a return of any sale or attempted sale in their respective counties, and from attempting in any manner to enforce the said charge; and plaintiffs further pray for a decree of this court cancelling any lien that may exist or attach to said property by reason of the assessment and levy of said tax upon the same as aforesaid, and that, pending the hearing hereof, a temporary restraining order and injunction be granted by this court restraining and enjoining them and each of them from collecting or attempting to collect, said tax, and from selling, offering for sale, or attempting to sell said lands or any part thereof until the further and final order of this court. That plaintiffs have judgment for their damages, for the cost of this action, and for all other and proper relief not herein specifically prayed for and which to the court may seem just and proper."

ASSIGNMENT OF ERROR.

First. The Supreme Court in deciding that Section 29 of an Act of Congress approved June 28, 1908, (30 Stat. L. p. 505) entitled, "An Act for the protection of the people of Indian Territory, and for other purposes," commonly known as the Atoka Agreement, does not vest in plaintiffs in error a valuable prop-

erty right, to-wit: the exemption of their allotments from taxation while the title remains in them and each of them, the original allottees thereof not, however, exceeding 21 years from the dates of the patents to said allotments received by them respectively each of the said plaintiffs having received an allotment from the tribal estate of the Choctaw Tribe of Indians under and by virtue of the provision of the said Act of Congress of June 28, 1898, as aforesaid, as specifically appears in the record and proceedings had in the said Supreme Court of Oklahoma.

Second. The said Supreme Court erred in deciding that the exemption guaranteed to plaintiffs in error by the said Section 29 of the said Act of Congress does not constitute a contract resting upon a valuable consideration, which cannot be impaired or violated by any subsequent Act of Legislation, either on the part of Congress or the State of Oklahoma.

Third. The said Supreme Court erred in holding and deciding that said Section 29 of the said Act of 1898 does not vest in plaintiffs in error and each of them an absolute and unconditional property right and constitute a contract and grant in their, and each of their, favor, which is protected by Section 10 of Article 1 of the Constitution of the United States, and which is likewise protected by amendments 5 and 14 of the Constitution; and further erred in deciding that such exemp-

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tion rights, privileges and immunities, as were conferred in the Act aforesaid, were mere gratuities resting upon no consideration and subject to be withdrawn by Congress, notwithstanding they and each of them are citizens of the United States, who hold a fee-simple title to their said allotments, and such exemption adds great value to their estates; and further holding that such property right may be extinguished by an Act of legislation and plaintiffs in error thereby deprived of the value thereof without compensation.

Fourth. The demurrer filed to the petition of plaintiffs in error in the lower court conceded, under the practice Act of Oklahoma, that the exemption of plaintiffs in error was a property right of great value and that rested upon a valuable consideration passing from them, and that the property interest exchanged by them for the allotments received was greatly in excess of the value of said allotments and it was admitted by said demurrer that the exemption right and privilege granted to them in said Section 29 was one of the inducements and considerations which influenced them to accept the allotment and relinquish their interest in the tribal estate and to also co-operate with the Government in its policy of allotting the lands of their tribe in severalty to the members thereof.

Fifth. The said Supreme Court erred in failing to decide that said Section 29 constituted a covenant be-

tween plaintiffs in error and the Government of the United States, which cannot be broken (the conditions all being complied with) without the exercise of bad faith toward them, members of a dependent and confiding race.

Sixth. The said Supreme Court erred in deciding that the first clause of Section 4 of an Act of Congress, approved May 27, 1908, (35 Stat. 312) was intended by Congress to subject the lands in controversy herein to taxation; and erred in failing to decide that the lands in controversy and the class of lands to which it belongs should be exempt from the operation of the statute; and erred in failing to decide that the application of the statute should be limited to lands on which the statute could operate without affecting the class of lands in controversy, and the vested rights of the owners thereof.

Seventh. The said Supreme Court erred in deciding that the said Section 4 of the Act of May 27th, 1908, if intended to apply to this class of lands in controversy, was a valid exercise of the power of the legislature.

Eighth. The said Supreme Court erred in deciding that the said Section 4 of the said Act was intended to apply to the allotment of plaintiff in error and lands of that class and in deciding that the said Act in that regard is constitutional; and erred in deciding that the said Section 4 is a valid law, and that the said allotments

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of plaintiffs in error are subject to taxation by virtue thereof.

Ninth. The said Supreme Court erred in denying to plaintiffs in error the rights, privileges and immunities granted to them by said Section 29 of the said Act of Congress of June 29, 1898, (30 Stat. 505) against their contention and that said rights should be protected; and erred in sustaining the decision of the trial court in which the demurrer to their petition was sustained and a judgment rendered against them, depriving them of their rights, privileges and immunities claimed, and adjudged them to pay the costs of the action, and further erred in not reversing the said trial court and deciding the issues in favor of the plaintiffs in error.

STATEMENT OF PROPOSITIONS OF LAW.

Because of the singleness of the issue presented, the discussion might, in compliance with the rule, be arranged under one topic. We will, however, discuss different phases of the question under separate headnotes with the view of presenting more clearly than otherwise the position for which we contend, and the principles which we consider controlling—We shall endeavor to show:

1st. That a legislative grant of an exemption from taxation, resting upon a consideration, is a contract and such an exemption becomes an element of value of the thing exempted and is therefore a property right.

2nd. That upon principle and authority Congress is as much prohibited from passing laws impairing the obligation of contracts as the legislatures of the States.

3rd. That a treaty or an agreement of the government made with an Indian Tribe has the legal force of a treaty with a foreign state and that because of the situation of the parties, it stands upon higher moral ground.

4th. That a repeal of the agreements made with the Indians and embodied in acts of Congress under which this exemption right is claimed will not be presumed but if repealed, rights already required are not affected.

5th. That the principles of law, under which we seek to protect the exemption in this case, have been invoked by the courts to protect similar rights in an almost endless variety of cases; and the United States Government, as much so as the States, is prohibited by the Federal constitution from depriving persons and corporations of property without due process of law.

6th. That at the time of the passage of the Act of May 27th, 1908, the plaintiffs were citizens of the United States, had received their patents for their allotments, the United States had relinquished its interest and control over their allotted land, and any attempt by Congress to make the same subject to taxation, was an unlawful exercise of governmental authority.

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7th. There is nothing in the status of the Indians of the five civilized tribes, and especially the plaintiffs in this case, that would take them and their property from under the protection of the Constitution of the United States, and Congress possesses no power or authority to legislate respecting Choctaw Indians and their private property that it does not possess respecting other citizens of the United States and their property in the State of Oklahoma.

8th. The subject of State taxation is a matter within the exclusive control and jurisdiction of the State, and since statehood the Congress of the United States is without power or authority to pass any legislation relating to the property of citizens of a State except for national purposes.

9th. The State of Oklahoma cannot independently of the Act of Congress of May 27th, 1908, tax the allotted lands of the Choctaws so long as the title remains in the original allottees, but must link its fortunes with the said Act of Congress which we maintain is void and of no effect, and with that act must stand or fall as the case may be, for by the provisions of its own constitution, the State of Oklahoma has exempted said lands from taxation during the force and effect of the treaties and Federal laws theretofore exempting said lands from taxation.

First Proposition.

A legislative grant of an exemption from taxation is presumed to rest upon a consideration and is conclusive against the grantor, and the exemption, attaching to the property, right or franchise, becomes an element of its value and is, therefore, a property right; and, when this right becomes vested it is inviolate and cannot be extinguished or disturbed by legislation. Such a grant constitutes a contract which is protected by Sec. 10 of Article 1 of the Constitution of the United States and likewise by amendments 5 and 14 of the Constitution. And, where an agreement for an exemption is entered into between the state and an individual, and the contract becomes executed, such a contract has all the force of a grant, wherein the authority of the grantor thereover entirely ceases, and such a contract is likewise inviolable and protected by said section and amendments to the Constitution.

New Jersey vs. Wilson, 7 Cranch, 164.
Thompson vs. Holden, 23 Fed. Cas. No. 13, 954.
Fletcher vs. Peck, 6 Cranch 87 31 c. 162.
Cooley's Const. Limitation, 7 Ed., page 395.
Poindexter vs. Greenhow, 114 U. S. 270.

So far as the power of taxation is concerned, it has been so often decided by the Supreme Court of the United States, though not without remonstrance on the part of state courts, that an agreement by a state for a

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consideration received or supposed to be received, that certain property, rights or franchises shall be exempt from taxation, or be taxed only at a certain agreed rate, is a contract protected by the Constitution, that the question can no longer be considered an open one. (Cooley's Const. Limi. Supra.)

The principles of law announced in New Jersey vs. Wilson, supra, have been re-iterated and affirmed by the Supreme Court in many subsequent decisions. **The property right** is an exemption from taxation, the contractual character of such a law, within the constitutional meaning, and the inviolability of such right have all been considered in many decisions; and the right under whatever circumstances it may have arisen, has at all times been held inviolate.

In the case of Union Pacific R. R. vs. United States, 99 U. S. p. 718, Chief Justice Waite says:

> "The United States cannot, any more than a state, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contracts, but equally with the states they are prohibited from depriving persons or corporations of property, without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its rail road. * * * The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much

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repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a state or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this in indisputable."

Rights which have become vested under a contract resting for its validity upon a statute, can not be impaired or annulled by a repeal of such statute. (May vs. Cass County, 96. N. W. 292.)

In the case of Nivens vs. Nivens, 76 S. W. p. 114, a Cherokee case, the court holds that "one's rights as widow and heir under the Cherokee statute of descent, having vested on death of her husband, are not affected by the subsequent repeal of the statute by the Curtis bill," yet this was Indian land, held by a member of the Five Civilized Tribes, and it was claimed Congress exercised "plenary power and control" over same. Judge Clayton in his decision in this case says that "the rights of the appellee had vested under the Cherokee Act, and no subsequent Act of Congress annulling the laws of the Cherokee Nation could divest those vested rights. Such an act would be retroactive, and in violation of the fifth amendment to the Constitution of the United States." p. 115. If Congress can not violate one statute of one of the Tribes under which rights have become established, can any reason be shown why it could arbitrarily annul another statute of equal dignity and thereby totally ex-

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tinguish valuable rights which have accrued?

The agreement between the Nations and the Federal Government as to exemption from taxation was a contract where both parties met on a basis of bargain and consideration, and the exemption granted was not from motives of state policy merely, and under the Enabling Act and the provision of the Oklahoma Constitution, Sec. 6, Art. 10, no reasonable person, it seems to us, would contend that it would have been in the power of the state to collect taxes on these allotments if Congress had not sought to give that power by providing that a certain class of them should be taxed.

What is or was the consideration upon which the exemption from taxation in the Atoka Agreement rests? It was this: It was the purpose and policy of the United States Government, as declared in the Act of Congress of March 3, 1893, (27 Stat. L. 645,) "to negotiate any and all such agreements as, in view of all the circumstances affecting the subject, shall be found requisite and suitable to such an arrangement of the rights and interests and affairs of such nations, tribes, bands, or Indians, or any of them, to enable the ultimate creation of a Territory of the United States with a view to the admission of the same as a State of the Union."

The title to the lands was in the Indian tribes and of that title the tribes could not be divested except by agreement, and it became one of the requisites to the

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"ultimate creation of a State of the Union," that the tribes be induced to enter into an agreement to dissolve their tribal or community interests and take title in severalty; otherwise, there never could have been a state erected here. The tribes opposed the proposition of the Government to break up their community interests, for they well knew that a state government, which was the "ultimate" purpose of the Federal Government, would make necessary the payment of taxes, and in their then condition they were secure against taxation so long as the title to the property remained in the tribes. So, according to the necessity of the situation, the Government of the United States, as an inducement to the Indians to dissolve their tribal interests, agreed with the Choctaw and Chickasaw tribes that if they would allot their lands in severalty, such lands should be "non-taxable while the title remains in the original allottees, but not to exceed twenty-one years from date of patent." Was not this a consideration of the highest character? To substitute the language of Chief Justice Marshall in the State of New Jersey vs. Wilson, 7th Cranch, 164, "every requisite to the formation of a contract is found in the proceedings between the "United States Government and the Choctaw and Chickasaw tribes of Indiains. The subject was the dissolution of the tribal relations for the purpose of ultimately creating a state of the Union, the dissolution of the tribal title being necessary to that purpose. "A proposition to this effect is

made, the terms stipulated, the consideration agreed upon, which was the exemption from taxation," of the lands allotted so long as the title remains in the original allottee, but not to exceed twenty-one years from date of patent. "This is certainly a contract clothed in forms of unusual solemnity."

Second Proposition.

Section 10 of Article 1 of the Constitution of the United States which provides, among other things, that no state shall pass any law impairing the obligation of contracts, does not in terms prohibit Congress from passing such a law; but, except in those instances where such a law may be passed in the exercise of an express power under the Constitution, the Congress is on principle as much prohibited from so doing as the legislatures of the States. The protection of property rights is one of the fundamental purposes of Government, one consideration of the social compact; and the exercise of a power by a legislature, which would impair the obligation of contracts or imperil the security in private property, whether prohibited or not, would be subversive of the fundamental principles upon which governments rest and without support in morals, reason or law.

Union Pac. Ry. Co. vs. United States, 99 U. S. 1 c. 718-19. (Sinking Fund Cases.)
Calder vs. Bull, 3rd Dallas, 388.
Miller on Constitution, 529-30.

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The law in force at the time a contract is made becomes a part of it and cannot be changed to the detriment of either of the contracting parties by subsequent legislation. (Current law, Vol. 3, p. 765 and authorities cited.)

It seems to be settled conclusively that a grant is a contract; executed, it is true, but still a contract, and therefore, if there be a grant, in itself valid, any law which is, or permits, a direct interference with the enjoyment of the things granted or a diminution of their value, or any deprivation of the things granted, or of the rights or interests belonging to them, by the grantor, impairs the obligation of the contract. (Parsons on Contracts, 9th Ed. Vol. 3, p. 503.)

In the case at bar it will be observed that the patents to the land in controversy were issued long before any Act of Congress was passed providing for the taxation of Indian lands, and before it is claimed any attempt had been made to repeal the law exempting the allotments in the Choctaw Nation from taxation. Therefore, this grant of lands, by a power constitutionally empowered to make it, constituted a compact between the parties, and the rights conferred under it cannot be impaired or revoked. The grant in its very nature, amounted to an extinguishment of all the rights of the grantor, and furthermore implied a contract not to re-

assert said rights. The grantor, therefore, is estopped in this case by its own grant.

If the privilege of exemption is annexed to the land, it will pass to a purchaser, (New Jersey vs. Wilson, supra.)

If a statute provides that all land purchased from the United States shall be exempt from taxation for a certain period, it cannot be taxed till the expiration of that time. (Thompson vs. Halton, 6, McLean, p. 386.)

Liability to make just compensation is not prevented by the fact that the land was taken by the United States in exercise of the power to improve navigation. United States vs. Synah, 188 U. S., p. 445.

A state constitution is a "law" within the meaning of the contract clause of the United States Constitution. Lehigh Valley R. R. Co. vs. McFarland, 4 Stewart, 706.

What rights are implied by a grant. Parsons on Contracts, 3rd Vol., 9th Ed., p. 510 et seq.

While the constitutional inhibition against the passage of laws impairing the obligation of contracts is a limitation upon the powers of the states and not that of Congress, the taking of private property by Congressional Enactment is protected by the 5th Amendment to the Constitution which declares that "No person shall be deprived of life, liberty or property without

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due process of law." Evans-Snider-Buel Co. vs. McFadden 105 Fed. Rep. pp. 293 et seq. Same case 185 U. S. Lawyers Edition, Book 46, p. 1012.

The phrase "a vested right" has no very precise signification. It is an expression which is not used in the Federal constitution, nor in any of the amendments; the language of the fifth amendment being that "no person * * * shall be deprived of * * * property without due process of law." And when the phrase "a vested right" or a "vested interest" is used in other relations it may with reasonable precision be held to mean some right or interest in property that has become fixed or established, and is no longer open to doubt or controversy. Instead, however, of seeking for an exact definition of the phrase in question, we think it will be more profitable for present purposes to refer to some of the cases, and particularly to those which are of controlling authority here, where it has been held that rights acquired in virtue of existing laws, and claimed to be vested, were not so far vested as to become property within the meaning of the Federal constitution, and to be for that reason beyond the reach of legislative action. Evans-Snider-Burl Co. vs. McFadden, 105 Federal Rep. p. 300 et seq. and authorities cited here. Same case 185 U. S. Lawyers Edition, Book 46, p. 1012.

In the foreging case the majority opinion in the lower court was that there were no "vested rights," but

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re-affirmed the oft repeated doctrine that vested rights were protected by the 5th Amendment to the Constitution of the United States. In the dissenting opinion by Judge Sanborn he takes the view that in that particular case the question of vested rights was involved and quotes many authorities on the subject. In this particular case an Act of Congress was involved, and all of the Judges agree that the 5th Amendment applies to Congress and that Congress can not pass an act destroying a vested right. This case was appealed to the Supreme Court and affirmed, and we invite the Court's attention to the case and to the large number of authorities cited in the majority and minority opinions in the Court below and in the brief of counsel published in the 185 U. S. Lawyers Ed., Book 46, p. 1014 et seq. on the proposition that Congress can not pass laws which have the effect of divesting vested rights.

While the Constitution does not forbid Congress to pass laws impairing the obligation of contracts, yet an act passed for the purpose of impairing contract obligations would be void. Sutherland on Notes to U. S. Con. p. 78.

Although Congress can ont authorize a state to legislate, it may adopt state legislation. Same authority p. 79.

(a) "That no person shall be deprived of life, liberty or property without due process of law," etc., are provi-

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sions of the Constitution which it is intended the courts shall enforce, even against person assuming to act under the authority of the government. U. S. vs. Lee, 106 U. S., p. 196.

A repeal of a law which is, in its nature, a contract, cannot divest vested rights which have been established under that statute. Digest U. S. Rep. Lawyers Ed., Vol. 2, p. 1715; Poindexter vs. Greenhow, 114 U. S., p. 270.

The charter granted by the British Crown to the trustees of Dartmouth College is a contract within the protection of the Constitution. Dartmouth College vs. Woodward, 4 Wheat, 518.

The Government has no power to revoke a grant, even of its own funds, when given to a private person, or a corporation for special purposes. Same case.

Vested rights are inviolable. Sutherland on Statutory Construction, p. 626.

The United States is bound by its contracts the same as an individual. (Beach on Modern Law Contracts, Vol. 2, p. 2121, and Section 1634-1637. U. S. vs. Bostwick, 94 U. S., p. 53. Foster vs. Nelson, 2 Pet. 253-314.)

Grant of immunity from taxation cannot be abrogated without impairing obligation of contract unless right to do so is expressly reserved. (Hewitt vs. N. Y. R. R. Co., Federal Cases No. 6443.)

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Third Proposition.

A treaty or agreement between the Government and an Indian Tribe is as binding from every legal standpoint as a treaty between the Government and a foreign state; but because of that relation between the Government and the Indiains, which, through the superior power of the former, the latter is made dependent on its will and subject to its authority, the agreements and treaties made with the Indians, involve a higher moral obligation on the part of the Government than if made with an independent state.

Where, under such circumstances, an agreement has been made between the strong and the weak, the independent and the dependent sovereignties, and property rights thereunder acquired by the latter in reliance solely upon the good faith of the former, it would be repugnant to every instinct of justice and morality to contend that the rights so acquired may be violated, simply because the power exists so to do; and although conceding that power in the abstract to exist, nevertheless, no considerations other than those of public policy of the greatest moment would justify its exercise.

United States vs. Winans, 198 U. S. 371.
Kansas Indians, 5 Wall. 737.
Worcester vs. Georgia, 6 Pet. 515.
Jones vs. Mehan, 175 U. S. 1.
Choctaw Nation vs. United States 119 U. S. 1.
Lone Wolf vs. Hitchcock 187 U. S. 565.

Property rights acquired by Indians under treaties are and have at all times been protected by the Constitution. In Worcester vs. Georgia, 6 Pet. 515, Mr. Chief Justice Marshall said:

> "The Constitution, by declaring treaties already made as well as those to be made to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian Nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense."

In Edye vs. Robertson, 112 U. S. p. 598, Mr. Justice Miller said:

> "But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country. * * * The Constitution of the United States places such provisions as these in the same category as the other laws of Congress by its declaration that 'this Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made, under authority of the United States, shall be the supreme law of the land.' A treaty then, is a law of the land, as an Act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizens or sub-

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> ject may be determined. And, when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would do to a statute."

That an absolute title may be conferred upon an Indian, or class of Indians, by a treaty which is entitled to and given protection, has been repeatedly decided, notably in New York Indians vs. United States, 170 U. S., p. 1, and cases cited therein; U. S. vs. New York Indians, 173 U. S., p. 454; Jones vs. Meehan, 175 U. S., p. 1, and Shulthis vs. McDougal, 170 Fed. Rep. 529.

In Wallace vs. Adams, 143 Fed. Rep. 716, Judge Sanborn said that the opinions in certain cases, which he mentions, are limited to rulings that grants to designated persons or classes of persons are grants in praesenti; and that after they have taken effect the rights to the property have vested so that they may not lawfully be destroyed by legislation without compensation.

In the Kansas Indians, 5 Wall. 737, Mr. Justice Davis observed of the Indians:

> "If they have outlived many things, they have not outlived the protection afforded by the Constitution, treaties and laws of Congress."

That a political right dependent upon the continuation of the treaty for its existence may be terminated by the abrogation of the treaty, may be conceded. But, the repeal of a treaty under which property rights have

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been secured can not affect said rights. In Chae Chan Ping vs. U. S., 130 U. S. p. 581, Mr. Justice Field thus made plain the distinction between vested and political treaty rights:

> "The rights and interests created by a treaty which have become so vested that its expiration or abrogation will not destroy or impair them are such as are connected with and lie in property capable of sale and transfer or other disposition not such as are personal and untransferable in their character. Thus in the Head-Money cases the court speaks of certain rights being in some instances conferred upon citizens or subjects of one nation residing in the territorial limits of the other, which are capable of enforcement as between private parties in the courts of the country. 'An illustration of this character,' it adds, 'is found in treaties which regulate the mutual rights of citizens and subjects of the contracting Nations in regard to rights of property by descent or inheritance when the individuals concerned are aliens.' 112 U. S. 580. The passage cited by counsel from the language of Mr. Justice Washington in Society for the Propagation of the Gospel vs. New Haven, 21 U. S. 8 Wheat, 464, also illustrates this doctrine. There the learned Justice observes that 'if real estate be purchased or secured under a treaty it would be most mischievous to admit that the extinguishment of the treaty extinguished the right to such estate. In truth it no more affects such rights than the repeal of a municipal law affects rights acquired under it."

All the decisions of the Supreme Court relative to the affairs of the Five Tribes, thus far rendered, have had to do only with the validity of the means Congress

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had adopted for determining the political question of citizenship and the effect of such judgments, and do not touch the question of property rights under the treaties and grants. In Wallace vs. Adams, 204 U. S., p. 415, Mr. Justice Brewer said that in Stephens vs. Cherokee Nation, 174 U. S., 445, this Court

> "entertained and decided the purely judicial question of the validity of the means Congress had adopted for determining the matter of citizenship."

In Stephens vs. Cherokee Nation, 174 U. S., 445, the Supreme Court said:

> "We have no hesitation in saying that in our opinion the appeal thus granted was intended to extend only to the constitutionality or validity of the legislation affecting citizenship or the allotment of lands in the Indian Territoy."

The plaintiffs in these cases are not here seeking to have their political rights as citizens of the nations determined—that is a matter for Congress and its agencies—but they are here seeking to secure the enforcement of their constitutional property rights under the treaties, agreements and laws of the land. The construction of these laws and the rights secured under them is the peculiar province of the judiciary, and not of Congress. In Jones vs. Meehan 175 U. S., p. 1, Mr. Justice Gray said:

> "The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional

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> power to settle the rights under a treaty, or to affect titles already granted by the treaty itself."

This rule was the subject of special consideration in New York Indians vs. U. S., 40 Court of Claims, 448. So in the recent case of Garfield vs. U. S. 211, U. S. 262, Mr. Justice Day, among other things, says:

> "The right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court."

The State of Oklahoma recognized the legality and justice of the claims of the Atoka Agreement exempting the lands of the Indians from taxation for a period of years by making such exemption a part of its organic law as previously shown. (Sec. 6, Art. 10, Oklahoma Const.)

Fourth Proposition.

Repeals by implication are not favored. Unless express terms are used, or the repugnancy of the statutes is so great as to be irreconcilable, the former statute will stand and no intent to repeal will be presumed. And, where rights have been ecaquired under a statute, it can only be repealed by express terms, showing an unmistakable intention so to do; but when thus repealed the rights acquired thereunder cannot be divested or disturbed. It is likewise true that many statutes are, and

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may be, construed with certain exceptions from the effect of their general operation. This is necessary in order that other statutes, under which rights have become fixed, and which would otherwise be repealed, may still be operative to the extent of preserving such rights.

Cooley's Constitutional Limitations, 7 Ed. pages 216-7.
Frost vs. Wenie, 157 U. S., 46.
United States vs. Lee Yan Tai, 185 U. S., 220-3.
United States vs. Healey, 160 U. S. 145-6.
United States vs. Kirby, 7 Wall, 486.
Carlisle vs. United States, 16 Wall 153.
Market Co. vs. Hoffman, 101 U. S. 116.
McKee vs. United States, 164 U. S. 287.
Exparte Steele, 162 Fed. l. c. 704-0.

Fifth Proposition.

The principles of law announced in New Jersey vs. Wilson, 6 Cranch 164, above, have been reiterated and affirmed by the Supreme Court in many subsequent decisions. The property right is an exemption from taxation, the contractual character of such a law, within the constitutional meaning, and the inviolability of such a right have all been considered in many decisions; and the right, under whatever circumstances it may have arisen, has at all times been held inviolate.

There are instances almost innumerable, and we refer to some of them, in which the courts have held that a grant of a franchise to a corporation with the exemption of its property from taxation for a limited term, if

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accepted and acted on by the corporation constitutes a contract between the corporation and the state or municipality granting the same, and that the rights of the parties thereto cannot be changed or modified by legislation. The rule has been exactly the same in cases where exemptions have been granted to churches, charities, public or private enterprises, and contracts of this character are of equal efficacy whether between states or municipalities and individuals or between two states.

In support of the rule here stated we refer the court to the following authorities, all of which refer with approval to the controlling principle of the New Jersey case:

Terrett vs. Taylor, 9 Cranch, 43.
United States vs. Arredondo and others, 6 Peters, 738.
Armstrong et al. vs. The Treasurer of Athens Co., 16 Peters, 289.
Baldwin et al. vs. Payne, et al. 6 Howard, 332; and The West River Bridge Company vs. Dix, et al., 6 Howard, 542.
State Bank of Ohio vs. Knoop, 16 Howard, 385 and 401.
Von Hoffman vs. City of Quincy, 4 Wallace, 550-4.
Home of the Friendless vs. Rouse, 8 Wallace, 438.
Salt Company vs. East Saginaw, 13 Wallace, 376.
Tomilson vs. Jessup, 15 Wallace, 458.
Humphrey vs. Pegues, 16 Wall, 244.
Morgan vs. Louisiana, 93 U. S. 223.
Antonio vs. Greenhow, 107, U. S. 803 and Louisiana vs. Jumel, 107 U. S.,

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Givens vs. Wright, 117 U. S. 655.
Pearsall vs. Great Northern Ry., 161 U. S., 662.
Jefferson Branch Bank vs. Skelly, 1 Black, 436.
Great Northern Ry Co., vs. Minnesota, 216 U. S., 206 (l. c. 233).

It is competent for a state legislature to grant, by statute or charter, an irrepealable contract for exemption from taxes. (95 U. S., p. 104.)

Sixth Proposition.

The Choctaw Indians are citizens of the United States, with all the rights and privileges of such citizenship, made so by statute of unquestioned validity, and are citizens of the State of Oklahoma by virtue of the Constitution of the United States; they own their allotted lands in severalty and private ownership. At the time of the passage of the Act of May 27, 1908, the plaintiff was a citizen of the United States, had received his patent for his allotment, the United States had relinquished its interest and control over his allotted land, and any attempt by Congress to make the same subject to taxation, was an unlawful exercise of governmental authority.

On March 3, 1901, that part of the Act of Congress conferring citizenship upon allottees who had received their patents having special reference to Indians outside of the Indian Territory was amended by adding

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the words "and every Indian in the Indian Territory," which made that part of the law applicable to the Indians of the Indian Territory read as follows:

> "And * * * * * every Indian in the Indian Territory is hereby declared to be a citizen of the United States and entitled to all the rights, privileges and immunities of such citizens, whether such Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property." (31 U. S. Stat. p. 1447.)

The terms of the Enabling Act conferred upon every Indian in Oklahoma all of the privileges of citizenship, as will appear by Section 2 thereof which provides:

> "That all male persons over the age of twenty-one years, who are citizens of the United States, or who are members of any Indiian Nation or Tribe in said Indian Territory and Oklahoma, and who have resided within the limits of said proposed state for at least six months next preceding the election, are hereby authorized to vote for and choose delegates to form a constitutional convention for said proposed state."

The terms of the Enabling Act were accepted by the Constitutional convention, a constitution was submitted and adopted, and the State of Oklahoma was, by proclamation of the President of the United States, admitted into the Union on November 16, 1907, on an equal footing with the original states. At the time of its ad-

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mission into the Union, the Choctaws were a part of the people of this state, and under the decision of the Supreme Court of the United States became ipso facto citizens—members of the Nation created by its adoption. (Minor vs. Hapersett, 21 Wall, 162, 167.)

On March 3, 1893, Congress enacted a law, Section 15 of which reads as follows (27 Stat. 645):

> "The consent of the United States is hereby given to the allotment of lands in severalty not exceedings one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles; and upon such allotments the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States. And the sum of twenty-five thousand dollars or so much thereof as may be necessary, is hereby appropriated to pay for the survey of any of such lands as may be allotted by any of said tribes of Indians to individual members of said tribes; and upon the allotment of the lands held by said tribes respectively, the reversionary interest of the United States therein shall be relinquished and shall cease."

It will be observed that it is provided in this section that "upon such allotments the individuals to whom the same may be allotted shall be deemed to be in **all** respects citizens of the United States." The word "all" is evidently inserted here for the same purpose. It is not that such allottee shall be deemed in some respects a citizen of the United States, or shall have in some respects the rights of the citizens of the United States,

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but it is that they shall be deemed to be in ALL respects citizens of the United States.

Then there is the concluding clause of the section:

> "And upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein, shall be relinquished and shall cease."

Therefore, under the provision of the very law creating the Commission, it was provided that every Indian who had received his allotment should be deemed in all respects a citizen of the United States, and that thereupon the reversionary interest of the United States therein, should be relinquished and should cease.

The question of citizenship of the individual allottee, and control of his allotment by Congress, is important only in this: That the only basis for the validity of the Act of 1908 is that Congress has and asserts "plenary power and control" over the property and person of the Indian. This has never been said by the Supreme Court except as to the tribal property or property in which the Government expressly retained an interest, but so far from being true, from 1893 down to the present time, Congress has shown a uniform determination to relinquish the control by the Government over the individual property of the Indian, and as to his person, that question is settled in the Heff case.

The constitutionality of Acts of Congress authoriz-

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ing the determination of citizenship in Indian tribes cannot be successfully assailed on the ground of the impairment or destruction of vested rights, as the lands and moneys of these tribes **are public lands and are not held in individual ownership.** Stephens vs. Cherokee Nation, 174 U. S., 445.

In the case of the Cherokee Nation vs. Hitchcock, 187 U. S. 308, Mr. Justice White significantly remarked:

> "There is no question involved in this case as to the taking of property; the authority which it is proposed to exercise by virtue of the Act of 1898 has relation merely to the control and development of the **tribal property,** which still remains subject to the administrative control of the Government, even though the members of the tribe have been invested with the status of citizenship under recent legislation."

In all the cases establishing or approving the doctrine that the power of Congress is plenary in Indian affairs, the courts have without exception made it plain that the doctrine is applicable only to tribal property, and in no case have the courts held that Congress has plenary power to legislate respecting an Indian who is a citizen of the United States and of the state in which he resides and his property which is not tribal.

When patents were signed by the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation and delivered to the allottees, all the right, title, and interest of the Choctaw and Chickasaw Na-

tions in and to the allotted lands were thereby relinquished, and said allotted lands ceased at that moment to be tribal property. It is provided in the Atoka Agreement (Section 29 of the Act of Congress approved June 28, 1898, 30 Stats. 495)

> "That, as soon as practicable after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall jointly execute, under their hands and the seals of the respective nations, and deliver to each of the said allottees patents conveying to him all the right, title and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him." ----------

When the Indian lands were allotted and thereby became vested private property and no longer tribal property, then the power of the Federal Government over said lands at once ceased to be plenary and became restricted in the constitutional sense. That is to say, the allotted lands of the Choctaws, who are citizens of the United States and of the State of Oklahoma, are not subject to be controlled by direct legislation of Congress, except for national purposes within the scope of legitimate governmental authority.

Seventh Proposition.

There is nothing in the status of the Indians of the Five Civilized Tribes that would take them and their property from under the protection of the Constitution of the United States and Congress possesses no power

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or authority to legislate respecting Choctaw Indians and their private property that it does not possess respecting other citizens of the United States and their property in the State of Oklahoma.

Mr. Justice Davis, in the case of the United States vs. Kansas Indians, 5 Wallace, 137, said:

> "If they (the Indians) have outlived many things, they have not outlived the protection afforded by the Constitution, treaties and laws of Congress."

It is true, the Choctaws and Chickasaws, along with other Indian tribes of the country, were until recently under the exclusive control of the Federal Government, but that was because of the peculiar relationship of the Indian tribes to the Government and related solely to tribal interests. The control of the Government yet remains as to Indian property that is **distinctively tribal.** But as to property which has ceased to be tribal property, which has become the separate and private property of individual Indians who are citizens of the United States and of the State of Oklahoma, we contend that the government control of such property has ceased to exist, and that Congress has no power to legislate with respect to such property any more than it would have to legislate respecting the property of any other citizens of the State of Oklahoma, not Indians.

Mr. Justice Brewer, of the Supreme Court of the

United States, speaking for the court in the Heff case, said:

> "Can it be that because one has Indian, and only Indian blood in his veins, he is to be forever one of a special class over whom the general government may, in its discretion, assume the rights of guardianship which it has once abandoned, and this whether the state or individual himself consents? We think the reach to which this argument goes demonstrates that it is unsound." (In re Huff, 197 U. S., 448, 49 Law Ed. 348.)

Has the Government of the United States abandoned its guardianship of the individual Choctaw and Chickasaw Indians and their private or individual property?

The Supreme Court of the United States in the Heff case, above cited, says:

> "We are of the opinion that, when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of, and requires him to be subject to, the laws, both civil and criminal, of the state, it places him outside the reach of police regulations on the part of Congress; that the emancipation from Federal control, thus created, cannot be set aside at the instance of the Government without the consent of the individual Indian and the state, and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property."

In United States vs. Augur, 155 Fed. Rep. 671 the court says:

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> "In my judgment when Congress clothed the allottee with full citizenship and to provide against his improvidence, vested in him title to his inalienable lands, so that no scheme nor device, however ingenious, could divest him thereof, it did so for the very reason that in carrying out the original plan of statehood, which was to include the Indian, his status as ward of the government was not in the nature of things compatible with full citizenship in the state and Union, and that it was not intended by Congress that the guardianship should longer continue."

If, then, the Government of the United States relinquished or abandoned its guardianship control of the individual Indian and his property when it made the Indian a citizen of the United States and subjected him to the laws of the state, both civil and criminal, and cannot retake or reassume that control without the consent of the Indian, can the government legislate respecting the private property of an Indian after it has committed the Indian and his private property to the control and jurisdiction of the state?

The United States Supreme Court has said:

> "In this Republic there is a dual system of government, national and state. Each within its own domain is supreme, and one of the chief functions of this court is to preserve the balance between them, protecting each in the powers it possesses and preventing any trespasses thereon by the other." (In re Heff, 197 U. S. 49 Law Ed., 848.)

Again, in the same case, the Court says, after re-

affirming the doctrine laid down in Kansas Indians, 5 Wallace, 737, that there can be no divided authority as to the Indian and his property, that:

> "If it be true that there can be no divided authority over the property of the Indian, **a fortiori** must it be true as to his political status and rights."

Eighth Proposition.

The subject of state taxation is a matter within the exclusive control and jurisdiction of the state, and since statehood the Congress of the United States is without power or authority to pass any legislation relating to the property of citizens of the state **except for national purposes.**

In the case of the Union Pac. R. R. Co., vs. Paniston, 18 Wall, 21 Law Ed. p. 757, the court uses this language:

> "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the Constitution of United States, and underived from that instrument; that it may be exercised to an unlimited extent upon all property, trades, business and avocations existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal Government, either expressly or by necessary implication, are propositions that have often been asserted by this court." (Union Pac. R. R. Co., vs. Paniston, 18 Wallace, 21 Law. Ed., 757. Nathen vs. The State of Louisiana, 8 Howard, 12 Law. Ed., 992.)

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In Gibbons vs. Ogden, 9 Wheaton 1, 6 Law. Ed., 23, Chief Justice Marshall said:

> "Congress is authorized to levy and collect taxes, etc., to pay the debts, and provide for the common defense and general welfare of the United States. This does not interfere with the power of the state to tax for their own governments; nor is the exercise of that power by the states an exercise of any portion of the power of the United States. In imposing taxes for state purposes, they are not doing what Congress is empowered to do. Congress is not empowered to tax for these purposes which are within the exclusive province of the states."

Aside from the fact that state taxation is a matter within the exclusive control of the state, and is not a proper subject for congressional legislation in any aspect, the Act of Congress approved May 27, 1908, subjecting certain lands of the Choctaw and Chickasaw Indians to taxation is without warrant of authority in the Constitution of the United States, either express or by necessary implication, and is, therefore, null and void and of no effect. It is a fundamental principle now so well established as to be elementary, that Congress cannot exercise any authority that is not expressly or by necessary implication delegated to it by the Constitution of the United States. Mr. Cooley says:

> "The government of the United States is one of enumerated powers; the national Constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the national gov-

ernment assumes to possess." (Cooley Constitutional Limitations, 7th Ed., p. 11.)

> "The Government, then, of the United States, can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication," (Martin vs. Hunter's Lessee, 1 Wheaton 304, 4th Law Ed., 97.)

> "These deductions do not rest upon general reasoning, plain and obvious as they may seem to be. They have been positively recognized by one of the articles in amendment of the Constitution, which declares that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.'" (Martin vs. Hunter's Lessee, supra.)

Therefore, there being no authority in the Constitution of the United States, either express or by necessary implication, for the Act of Congress subjecting the Indian lands to taxation, it is as much unconstitutional as though the Act had contravened an express provision of that instrument, and must unavoidably meet the same fate in the courts as other unconstitutional legislation, and receive the pronunciamento, "null and void."

Ninth Proposition.

The State of Oklahoma cannot, independently of the Act of Congress of May 27, 1908, tax the allotted lands of the Choctaws and Chickasaws so long as the title remains in the original allottees, but must link its fortunes

with the said Act of Congress, which we maintain is void and of no effect, and with that Act must stand or fall, as the case may be, for by the provisions of its own Constitution, the State of Oklahoma has exempted said lands from taxation.

> "All property owned by ---------- shall be exempt from taxation, and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States Government, or by Federal Laws, during the force and effect of such treaties or Federal Laws." (Constitution of Oklahoma, Art. 10, Sec. 6.)

Furthermore, should the state attempt to tax said lands of the Choctaws and Chickasaws independently and irrespective of the said Act of Congress, it would be in direct violation of that provision of the Federal Constitution which says:

> "That no state shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

Thus it appears that independently of the Act of Congress of May 27, 1908, the State is prohibited by both the Federal and State Constitution from collecting taxes on Indian allotted lands,—in one instance by its own constitution which exempts the Indian lands from taxation during the force and effect of the treaties with the Indians and of Federal laws; in the other instance, that to tax said lands in violation of said Indian treaties or Federal laws would be an impairment of the

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obligations of a contract between the United States Government and the Indians, and therefore prohibited by the Constitution of the United States.

Marchie Tiger's Case.

The above case reported in 221 U. S. 286 and the other cases relied on by the defendant in error, supporting a doctrine of the plenary power of the government to administer and control the property of tribes and individual Indians and adopt policies and regulations concerning tribes and individual Indians necessary for the general good, are not at all in conformity with the principles which we contend are controlling in this case. We are not called on here to challenge the power of Congress to legislate concerning these matters and to prescribe such legislation in that regard as it may deem necessary to conserve the well being of the Indian and protect his property, but all this is conceded by us to be settled by the numerous adjudications of this Court, as reference to the cases will disclose, among which may be mentioned the following:

Marchie Tiger vs. Western Investment Co., 221 U. S., 286.
Choctaw Nation vs. United States, 119 U. S., p. 1.
United States vs. Sutton, 215 U. S. 291.
United States vs. Celestine, 215 U. S. 278.
McKay vs. Kalyton, 204 U. S., 458.
Matter of Heff, 197 U. S., 488.
United States vs. Rickert, 188 U. S. 432.

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Lone Wolf vs. Hitchcock, 187 U. S. 553.
Cherokee Nation vs. Hitchcock, 187 U. S. 294.
Stephens vs. Cherokee Nation, 174 U. S. 445.
United States vs. Kagama, 118 U. S. 445.

In the Tiger's cases, above, the question was presented as to the construction and applications of certain sections of the Act of Congress of April 26, 1906, in which it was contended by the plaintiff in error that under Section 22 of the said Act, full blood Indians were prohibited from selling inherited lands without the approval of the Secretary of the Interior but were permitted to sell such lands with his approval. And it was further contended that under said Act this requirement was extended to continue beyond the time fixed by the Supplemental Creek Agreement and Act of Congress of June 30, 1902. This meaning and application of the statute was denied by defendant in error, whereupon the court in that case was called upon to define the scope and application of the statute considered in connection with other legislation upon the subject.

Plaintiff in error also contended that Congress had the undoubted power to enact legislation of this character, while the defendant in error contended that if the Act had the effect contended for by plaintiff in error, then it was unconstitutional and that such legislation was in violation of the rights of the Indians affected,

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who had been made citizens of the United States with all the rights, privileges and immunities of citizenship. And the Court was thereupon required to determine also whether this legislation had in fact violated any of the personal rights of the Indian secured to him by the grant of citizenship.

When the issues in the above case are examined and the points decided are considered, it becomes manifest that there was no property right involved in the case or question affecting such a right determined by the court. This being true the case is not in point here because the substance of this controversy is a property right pure and simple. The same may be said of the other cases last above referred to, in which the power of Congress to enact laws deemed by it proper to protect the Indian and his property. In none of these case is it held or intimated that there is any power anywhere to deprive the Indian of his property without due compensation; nor that, because he is an Indian, he has a less right in that regard than any other person. They deal largely with the administrative control of the property of Indian Tribes and individual Indians who have not been discharged entirely from the guardianship of the Government. In fact, in one of the leading cases cited above (Cherokee Nation vs. Hitchcock, 187 U. S. 294), it was specifically observed by Mr. Justice, now Mr. Chief Justice, White, speaking for the Court, that,

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> "There is no question involved in this case as to the taking of property; the authority which it is supposed to exercise by virtue of the Act of 1898 has relation merely to the control and development of the tribal property, which still remains subject to the administrative control of the Government, even though the members of the tribe have been invested with a status of citizenship under recent legislation."

The above paragraph was quoted approvingly by Mr. Justice Day, speaking for the Court, in the above, Tiger vs. Western Investment Company, and no where in the opinion in the latter case can there be found an expression giving color of support to the proposition that Congress would have power to deprive the Indian or an Indian Tribe of a property or property right without due process of law. In the Tiger case, the extension of the period of alienation was a benefit to the Indian, made for his protection—a giving of something to him. In the case at bar, the repeal of the exemption was taking something from him which he had accepted in good faith, distinctly contractual in its nature and founded upon a consideration.

SUPREME COURT OF OKLAHOMA.

The decision of the Supreme Court of Oklahoma in this case is grounded upon the general proposition that the exemption right relied on by plaintiff in error was gratuitous and for that reason Congress had the power to withdraw or terminate the same by a subsequent Act. In reaching this conclusion we think that Court has over-

looked entirely a controlling consideration because as we shall show later, the authorities relied on in support of their conclusion are decisions in cases not at all analogous in point of fact to the case at bar.

To what is said by the Oklahoma Court relative to the power of Congress to legislate concerning the control and administration of the property of the Indians or as to their personal well being as recognized in such cases as Lone Wolf vs. Hitchcock, 187 U. S. 553, Stephens vs. Cherokee Nation, 174 U. S. 445, United States vs. Kagama, 118 U. S. 375, and a number of other cases announcing the same doctrine, we fully agree, but must again insist, that the principles thus announced are not at all in conflict with that for which we here contend. That line of cases hold that Congress may exert plenary power in the interest of the Indian and to protect his property but none of them hold that this power can be exercised by Congress to deprive him of his property.

We now briefly call attention to some of the cases relied on in its opinion to support the theory that the exemption set up in this case is a gratuity. An examination of the facts in Grand Lodge vs. New Orleans, 166 U. S. 143, will show that the lodge owned the property, both the ground and the hall, at the time an act of the Louisiana legislature was passed which exempted the same from taxation so long as occupied by the lodge; that subsequently while the hall was still occupied by

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the lodge, a new constitution was adopted making the property taxable. As held by this court there was nothing whatever in that situation possessing the elements of a contract between the state and the lodge and the Act of the legislature was a mere bonus, tendered without consideration unconditionally and without any requirement on the part of the lodge. The case of the County of Stanislaus vs. Canal Company, 192 U. S. 201, is one where the legislature of California by a general Act applicable to the regulation of water companies made a certain provision as to the rate of rents, tolls, etc., which was afterwards changed by the legislature. It was held there that a Water Company which organized while the law was in force was not in a position to object to the modification of the law by the legislature as the legislation did not constitute a contract with the company. The case of Welch vs. Cook, 7 Otto 541, is based upon the general act of the assembly of the district of Columbia, exempting from taxation all property, etc., used for manufacturing purposes. It is held that this law might be repealed as it did not constitute a contract.

The case of Goudy vs. Meath, 203 U. S. 148, is not sufficiently in point to have any application whatever. The legislation upon which the Goudy case was based was to the effect that the Indians would not have a right to sell their lands until authority to do so should be

granted by the legislature of the State in which the lands were situated with the consent of Congress. While the lands were not subject to sale by the Indians they were likewise not subject to forced sale. The legislature of the State of Washington, with the consent of Congress, had removed the restrictions against the alienation of the lands in controversy. But it was sought in that case, notwithstanding the removal of restrictions, to prohibit the forced sale of the lands for taxes, etc. This Court held that inasmuch as there was no specific exemption from taxation that after the land become alienable they were therefore subject to taxation. This is very far from holding that a specific exemption from taxation for a fixed period of time resting upon treaty stipulation and Acts of Congress would not be binding.

It is observed by a review of the cases relied on by the Oklahoma Court that in no instance was there a stipulation in the charter of any of the complaining parties providing for an exemption from taxation, and that in no instance did the law make any requirement or place any condition upon the parties availing themselves to its benefits. These facts are emphasized in the Grand Lodge case above (166 U. S. 143).

Several authorities are cited in the opinion, among which are Horner vs. United States, 143 U. S. 570, holding that a treaty may be repealed by an Act of Congress. This rule will not be questioned here. It must,

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however, be applied with reference to another rule equally as well settled by this court, to the effect, that while Congress may repeal any law which it has enacted or any treaty into which the Government has entered, nevertheless property rights which have been acquired and become vested under such law or treaty cannot be affected by the repeal thereof.

Chinese Exclusion case, 130 U. S. 609.

It is a familiar principle that the citizens of a State have no property interest in a general exemption law, or in the statute of limitations, or in any of that class of laws which through gratuity of the legislature confers upon them a privilege or benefit. Public policies emanating from such laws may be abandoned at any time by the legislative power which created them. But all this is no answer to the contention of plaintiffs in error in this case because the agreements and Acts of Congress granting to them this exemption for a fixed period of years considered in connection with the conduct of the parties vests the transaction with all the elements of a contract. Nor can this position be answered by a statement that the government was under no obligation to enter into a contract with the Indians because it had the power to enact the laws independent of the Indian's consent. It is sufficient to say that it did not do so, that it invited the negotiations and pledged itself to the fulfillment of the agreements made. Not only did it do

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these things but to give further emphasis to the transaction, it caused the stipulation for the exemption to be inserted in the instrument of conveyances vesting the title in the allottees and caused the instrument to be signed by the Secretary of the Interior in relinquishment of the Government's interest, and by the principal chief of the Choctaw Nation in relinquishment of the interest of the tribe and making its acceptance a relinquishment of the allottee in all tribal property (31 Stat. 861). It is too late now after all this, if the question of good faith, is not to be entirely overlooked, to assert that the Government had the power to enforce the allotment without the consent of the Indian.

Conclusion.

It can make no difference that in the supplementary agreement between the United States Government and the Choctaw and Chickasaw tribes (Act of Congress approved July 1, 1902—32 Stat. 646) nothing is said about the lands of the Choctaws and Chickasaws being nontaxable, for in said supplementary agreement there is nothing inconsistent with that provision of the Atoka Agreement which exempts the lands of the Choctaws and Chickasaws from taxation. The supplementary agreement is to prevail over the Atoka Agreement only in cases where the Atoka Agreement is inconsistent with the supplementary agreement. Section 68 of said supplementary agreement provides that:

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> "No Act of Congress or treaty provision, nor the Atoka Agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw Nations."

The supplementary agreement was not intended to supercede the Atoka Agreement, but, as its name and designation import, to be supplementary thereto. There is nothing in reason that will support a contention that because the supplementary agreement says nothing about taxation, the provision of the Atoka Agreement in relation to the subject of taxation is therefore repealed. On the other hand such an interpretation is strongly forbidden by well known rules of construction.

Repeals by implication are not favored. Unless express terms are used, or the repugnancy is so great as to be irreconcilable therewith, the former statute will stand and no intent to repeal will be presumed. And where rights have been acquired under a statute it can only be repealed by express terms showing an unmistakable intention to do so; and when thus repealed, the rights acquired thereunder cannot be divested or disturbed. It is likewise true that many statutes must be construed with certain exceptions from their effect of their general operation as provided by other statutes. (Cooley's Constitutional Limitations, 7 Ed. p. 216-7.)

No court has ever yet declared that Congress could pass a law **directly** impairing the obligations of contracts, or take private property, but because of some necessity

higher than the constitution, and if it is justified on the ground of supreme necessity, it must be a matter of general legislation and sovereignty which affects the interests of the whole people, and Congress has no right to select a particular community, like the Indians, and divest them of their property rights. In the celebrated Legal Tender cases, 12 Wall, 457, the decision of which was justified as a supreme necessity, and even then by a bare majority, the court says:

> "The Constitution does not prohibit Congress from taking any action which may **indirectly** have the effect of impairing the obligation of contracts. Contracts must be understood as made in reference to the possible exercise of the **rightful** authority of government; and no obligation of a contract can stand in the way of the exercise of **legitimate** governmental authority."

In McCulloch vs. Maryland, 4 Wheat., 421, the rule as stated to be:

> "Let the end be legitimate; let it be within the scope of the Constitution; and all means which are appropriate, which are plainly adapted to that end, and which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Can it be, that under a Constitution framed to establish justice, the government created should not be bound by its own contracts? I do not believe that to be the law. To hold this, would be to construe the Congress of the United States into a government of absolute,

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despotic, unlimited authority, except only as to the powers which are expressly forbidden.

> "Though there be no prohibition in the Constitution, the Congress is restrained from committing flagrant acts, from acts subverting the great principles of Republican liberty, and of the social contract, such as giving the property of A to B." 2 Pet. 647.

That government can scarcely be deemed to be free, when the rights of property are left solely dependent upon the will of the legislative body without any restraints. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred; at least, no court of justice in this country would be warranted in assuming that the power to violate and disregard them, a power so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the people. The people ought not to be presumed to part with rights so vital to their security and well being, without very strong and direct expressions of such an intention.

Respectfully submitted,

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POOR

OCT 24 1911
JAMES H. MCKENNEY

SUPREME COURT

OF THE

UNITED STATES

October Term, 1911.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, et al.,
Plaintiffs in Error,

vs.

J. L. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al.

No. 282

In Error to the Supreme Court of the State of Oklahoma.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

COPY

SUPREME COURT

OF THE

UNITED STATES

October Term, 1911.

MICHAEL H. GLEASON, MINNIE LOVE, HENRY McGEE, et al.,
Plaintiffs in Error
vs.
J. I. WOOD, County Treasurer of Pittsburg County, Oklahoma, et al.,
Defendants in Error.

No. 575

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

PROPOSITIONS URGED BY DEFENDANT IN ERROR.

(1.) The power of Congress over the Indian is governmental and plenary, not subject to deminution by contract, and to be exercised in accordance with the wisdom and conscience of Congress.

(2.) The state of Oklahoma made no contract. Upon this point the state court is conslusive, as well as upon the question of the meaning of

the provisions of the Oklahoma Constitution with reference to this case.

(3.) The decision that the state of Oklahoma made no contract is sufficiently broad to determine the case, and being a non-federal question, the appellate jurisdiction of this court is wanting.

(4.) As to the enabling act the parties were the United States and the State of Oklahoma. The plaintiffs in error have no individual rights as such therein.

(5.) The plaintiffs in error as individual Indians had no property rights in any of the treaties of the United States nor any separate property rights in the tribal lands which could be enforced in the courts.

The essentials of the case presented below and now here on appeal as stated in the petition filed in the Superior Court of Oklahoma State, County of Pittsburg (pages 14 to 22 on the printed record) are these:

That the plaintiffs in error are members and citizens of the Choctaw Tribe of Indians, which is one of the Five Civilized Tribes, enrolled as members of said tribe. Because of the Choctaw Treaty of the 15th of September, 1830, and the patent to the Choctaw Tribe of March 23, 1842, and the Atoka Agreement and the supplemental treaty ratified Sept. 25, 1902, they each became possessed, by warranty deeds, of one hundred and sixty acres of communal lands of

the tribe; that they are among the number of those whose allotment restrictions were removed by the provisions of Section 1 of the Act of May 27, 1908 (page 19 of the record); by the Atoka Agreement and the Supplemental Agreement their homesteads were to be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years from the date of their respective deeds, but that the act of Congress of May 27, 1908, in Section 1 thereof took away this right. It provided that

> "From and after sixty days from the date of this Act, the status of the lands allotted heretofore . . . . . to allottees of the Five Civilized Tribes, shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads, of said allottees enrolled as . . . . . means blood Indians, having less than one-half Indian blood . . . . . shall be free from all restrictions."

And Section 4 thereof provides that

> "All land from which restrictions have been or shall be removed shall be subject to taxation . . . . . as though it were the property of other persons than the allottees of the Five Civilized Tribes."

They plead in their petition (page 19 of the

record) that they are among the number of those "from whose homesteads restrictions were removed" by the above provisions of Section 1, but their contention is that this would impair contract right vested in them, in violation of Section 10 of Article 1 of the constitution of the United States, and deprive them of their property in violation of the Fifth and Fourteenth Amendments to the constitution of the United States. The Fourteenth Amendment they claim is in point because in the Act of Congress of June 16, 1906, commonly termed the Enabling Act of the State of Oklahoma, Section 1 of which provides:

> "That nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said Territory (so long as such rights shall remain unextinguished) or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this Act had never been passed."

And then it was provided in Section 3 of said

Enabling Act that the constitution of the proposed state should provide, among other things:

> "That the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title in or to . . . all lands lying west in said limits owned or held by any Indian tribe or nation."

And that by Section 22 it was provided that the constitutional convention provided for therein should by ordinance irrevocable accept the terms and conditions of said act; that by ordinance of the 22nd of April, 1907, the constitutional convention accepted the terms and conditions of the said act, and that the constitution of said state provides in Section 6 of Article 10 thereof that

> "all property owned by . . . . . shall be exempt from taxation and such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States government, or by Federal laws, during the force and effect of such treaties or Federal laws."

The contention of the plaintiffs is, in short, that Congress, by the Atoka Agreement and the Supplemental Agreement made an inviolable contract with them that their property should be exempt from taxation for twenty-one years after the date of their respective deeds: that the State of Oklahoma, under the cited section of the constitution made an invio-

lable contract with the United States for their benefit to the same effect; and now they complain that the State of Oklahoma has assessed their property for taxation and that the defendent, the treasurer of Pittsburg County, is about to issue a tax warrant to be levied upon their property for the collection of the taxes assessed against it out of the sale thereof, if necessary. Their prayer for injunction against such levy and sale was denied by the Oklahoma Court. Its opinion appears at 114 Pac., 710. Their contentions I summarize for the purpose of discussion as follows:

1. They contend that the provisions contained in the Atoka Agreement and the supplemental agreement as to exemption from taxation are presumed to rest upon a consideration attached to the property as an element in its value, and is, therefore, a property right, and as such, is inviolable.

2. They contend that though the power to abrogate the provisions of the treaty inhere in Congress yet that in a case where the taking of property is involved the power of Congress will not go so far as that.

3. They contend that Section 4 of the Act of May 27, 1908, must not be construed as applicable to their land, but only to such lands as to which restrictions had been removed or would be removed by

other acts of Congress, for instance, the Act of April 21, 1904, and Section 22 of the Act of April 26, 1906.

4. They contend that the passage of the ordinance irrevocable by the constitutional convention of the State of Oklahoma, together with the cited provision in the constitution of the state, estops the State from asserting an interest in conflict with the rights of the plaintiffs.

IS THE TAX EXEMPTION NAMED IN THE ATOKA AND SUPPLEMENTAL AGREEMENTS A PROPERTY RIGHT.

The Supreme Court of Oklahoma was of the opinion that the cited provisions of the Atoka and Supplemental Agreements did not amount to a contract, but was simply the statement of the then pleasure of the legislature, and so remained until subsequently altered by it. I cannot add to the force of what on this head is said by the Oklahoma court, nor do I think of cases more apposite than those cited in its opinion. As sustaining the contention of the plaintiff in error greatest stress is laid upon the case of State of New Jersey vs. Wilson, 7 Cranch, 164. The Oklahoma court well distinguishes the difference of that case from this, but if consideration is had of what it was that Congress was doing in the Delaware case and in the case of the Five Civilized Tribes, this

difference between legislative promulgation and legislative contract will at once appear. In the instance of the Delawares it will be noted that the United States is no party to the proceedings. It occurred in 1758, but the State treating directly with the Indians, passed an agreement by which the Indians released all claim to the lands south of the River Raritan, and it was agreed that the government should purchase a tract upon which the Indians might reside. The government referred to here could only have been the government of New Jersey, and it was provided that as to such newly purchased land

> "that the lands to be purchased for the Indians aforesaid shall not hereafter be subject to any tax, any law, usage or custom to the contrary thereof, in any wise notwithstanding."

The question was, could the State of New Jersey abrogate this contract? It was decided that this was a contract right which attached to the land; that the purchaser from the Indians stood as to the State in the same condition as did the Indian. The sale was made from the Indian to the purchaser with the assent of the state, with all of the privileges and immunities attaching to the land. Chief Justice Marshall said:

> "It is not doubted, but that the State of New Jersey might have insisted on a surrender of this priviledge, as the sole condition on which a sale

on the property should be allowed. But this condition has not been insisted on;the land has been sold, with the assent of the state, with all its privileges and immunities. The purchaser succeeds, with the assent of the state, to all the rights of the Indians; he stands, with respect to this land, in their place, and claims the benefit of their contract. This contract is certainly impaired by a law which would annul this essential part of it."

It will be noted that there was no question of whether the State of New Jersey, before the adoption of the constitution which vested the control of the Indian in Congress, might not have abrogated this treaty as every sovereign may abrogate his treaty. But it will be noticed that in 1801, after the adoption of the Constitution of the United States, the State of New Jersey passed an Act authorizing Indians to sell their land. In 1803 the land was sold,—the court found, with the assent of the state,—carrying with it all its privileges and immunities. Thus in 1804 when the act was passed repealing the exemption from taxation, it was a citizen of the United States who now held the land and also held a contract from the State of New Jersey for the exemption thereof from taxation. The Fifth Amendment clearly prohibits the state from abrogating that contract with that citizen of the United States. There could have been no question that the provision as to exemption was a contract, not an expression of legislative views

only, because it is said that the state assented to the sale of the privileges and immunities wtih the land.

How different are the facts in the instance of the Five Civilized Tribes! These acts took place after the adoption of the constitution, when no contract could be made with the Indian tribes except with the assent of the United States. In our case the state makes no contract with either the Indian or the Indian tribes, but the United States enters into the treaty, the Atoka and the Supplimental treaties. The United States by Act of May 27, 1908, provides that lands upon which restrictions have been or shall be removed shall be subject to taxation. Congress had it is true, provided in the Enabling Act that the State of Oklahoma must agree upon the exclusive control of Congress over the Indians, and the state in its constitution had exempted from taxation the lands of the Indian tribes, such as were exempted by treaties or Federal laws during the existence of such treaties or Federal laws. This provision of the constitution was not in all respects either useful or necessary. In any event the state was without power to tax either the Indian or the Indian's land except with the assent of Congress. As long as the Indian treaties or the Federal laws exempted such lands from taxation by the state, the state was without power to tax them, and made so by the constitution of the United States vesting in Congress exclusive control of the Indian, not by reason of the provision of Section 6 of Article

10. All that this part of Section 6 of Article 10 amounts to is a recognition on the part of the state of what is the law, in any event.

Likewise, the attitude of Congress in dealing with the Five Civilized Tribes was utterly different from that of the State of New Jersey when dealing with the Delawares. Without discussing the relative power of the State of New Jersey over the Delawares living within the confines previous to the adoption of the Constitution, it is only necessary to state that the attitudes of the states to the Indian tribes within its borders previous to the adoption of the Constitution, where not that of one hostile nation to another, was, in the case of weak states, that of one friendly nation treating with another, or, in the case of strong states and weak nations, that of one power enforcing its might upon another. The interconnection between the various Indian tribes one with another towards the white man, though discordant among themselves, and the fear that the inconsiderate act of one state by precipitating Indian troubles might force other states into undesired hostilities was the moving cause, among other things, why the various states surrendered to the national government the control and the exclusive control over the Indians. This control was surrendered to the national government, not only because to the national government was to be surrendered the duty of conducting negotiations and transactions with foreign countries, that

is, the treaty-making power of the Union and all its parts, but the especial enumeration of the Indian tribes separately from foreign nations evidences the solicitude of the framers of the constitution to remove the possibility of any discordant treatment of the Indians. But New Jersey when it was dealing with the Indians in 1758 treated with the Delawares on this occasion as a peaceable nation, and what occurred between these two nations was a treaty, and the reason why it was agreed that the Delawares' lands should be forever free from taxation was to assure them, as it were, of the non-interference of the State of New Jersey with them in the possession of their property. A totally different conception and point of view existed in regard to the Indians in the Indian Territory. The remnants of a once powerful people of the state, all autonomous action was in fact lost to them at the date of the Atoka Agreement. It is almost publicly confessed that the duty of the Daws Commission was to induce the Indians to agree to their allotment peaceably, but it has never been contemplated that the allotment would not have taken place in case the Indians had refused to agree, because it is notorious that under the act those beneficiaries who should refuse to take allotments were to have allotments made for them by public functionaries. The object of the Daws Commission was only to accomplish their allotment with as slight friction as possible. The position of Congress, however, had been determined many years before, that the future

prosperity of the red man lay rather in educating him to partake of the life of the nation than in further holding him apart in the continuance of his tribal life. Therefore, the only thing that Congresss was doing by these acts was not, as in the case of New Jersey, making an agreement with the Indian to grant his tribe certain lands in exchange for other lands and then to vest him with specific privileges in the granted lands, but was solely to determine the governmental policy, that is, whether he be continued in his tribal existence or as rapidly as possible be assimilated to the condition of the ordinary citizen of the United States, and, because it was feared that an exposure to the burdens of separate ownership might result in the loss of the land allotted to him, it was specifically agreed as a matter of governmental policy that he shall be protected first for twenty-one years from the date of the Agreement, and afterwards, by the supplemental agreement twenty-one years from the date of the deed. But subsequently the policy of Congress evoked objections even here, and provided by the Act of April 21, 1904, 33 Statutes 189, for the sale of half a million acres, being the residue of the lands left over after allotment, and at that time removed the restrictions upon alienation of lands of all allottees of either of the Five Civilized Tribes who were not of Indian blood, except minors or except as to homesteads, and then provided that the restrictions upon the alienation of all other allottees excepting minors and excepting homesteads

might, with the approval of the Secretary of the Interior, be removed.

This clearly indicates that in 1904 Congress was convinced that citizens of the Indian tribes who were not blood Indians did not need the protection of the provision against alienation except in the case of minors and except as to their homesteads, and, further, Congress foresaw that even blood Indians, such for instance as members of Congress and the Senators selected by the people of this state to represent them were, because of their experience in the world and other qualifications, entirely capable of conducting their affairs with success, and, therefore, provided that all allottees, excepting minors and as to homesteads, might with the approval of the Secretary of the Interior have their restrictions removed, and a further evidence of the development of this idea in Congress is evidenced by Section 22 of the act of April 26, 1906, 34 Statutes, 137, providing for the removal of restrictions on certain classes of lands and for the alienation thereof, and in the Act of April 26, 1906, in Section 19 I find that Congress even determined that where restrictions have been removed the exemption from taxation will also be removed. It is, therefore, nothing but a continuation of the development already noted to find that in the Act of May 27, 1908, Congress determined to remove the exemption from taxation wherever the restrictions upon alienation had been removed, a two-years' experience on

that subject having apparently convinced Congress of its wisdom.

In all of this there is only evidence of the exercise of the governmental power of Congress over the Indian. It will further be noted that in the very act of March 31, 1893, providing for the commissioners to make the grants, in the last paragraph it specifically provided that in making these allotments the government is not acting as a contractor, but as a sovereign. It is there provided:

> "Neither the provisions of this act nor the laws or treaties which may be had or made thereunder shall be held in any way to waive or impair any right of sovereignty which the government of the United States has over or respecting said Indian Territory or the people thereof, or any other right of government relating to said Territory, its lands or the people thereof."

How can there be any further contention in the face of this express provision that at this time, to-wit, March 31, 1893, the government in its dealings with the Indians did not mean to enter into any contract whatever and did not mean to surrender any of its sovereign control over either the people or their lands, and that any agreement made as to their lands would continue to be in the sovereign control of Congress.

Speaking on this subject this court in the Marchie

Tiger case, speaking through Mr. Justice Day said:

> "The sections of the Act of April 26, 1906, ... show a comprehensive system of protection as to such lands."

And as to the Act of May 27, 1908, he says as to the sections 8 and 9:

> "The obvious porpose of these provisions is to continue supervision of the right of full blood Indians to dispose of lands by will, and to require conveyances of the interest of full blood Indians of inherited lands to be approved by a competent court."

As to the meaning of the provisions against alienation, Mr. Justice Day says that these were intended to prevent improvident sales by the Indians, and the right of the government to forbid the sale of the inherited land, though the edict of prohibition be made after the allotment, was in that case firmly sustained as within the power of Congress, and the court says as to this act:

> "Conceding that Marchie Tiger by the act conferring citizenship obtained a status which gave him certain civil and political rights inherent in the privileges and immunities of such citizenship, unnecessary to here discuss, he was still a ward of the nation so far as the alienation of these lands was concerned, and a member of the existing Creek Nation. The inherited lands,

> though otherwise held in fee where inalienable without the consent of the Secretary of the Interior until August, 1907, by virtue of the act of Congress. In this state of affairs, Congress can, with plenary power over the subject, by a new act permit alienation of such lands at any time, subject only to the condition that the Secretary of the Interior should approve the conveyances."

It being now apparent that the policy of Congress has been from the very first to render that exempt from taxation which is made by it inalienable, and to render that subject to taxation which is by it made alienable, it must clearly appear that this provision as to exemption is the outward manifestation of the governmental purpose of protection of the Indian and not the contract whose obligation must not be broken.

Our answer to the first proposition, therefore, is, that the agreements as to exemption from taxation in the Atoka Agreement and the supplemental agreement do not rest upon a consideration, but upon a governmental motive, did not attach to the property as an element in its value, because it is expressly provided that it shall only continue while the property remains in the hands of the original aliottee, and, therefore, is not a property right, but a governmental condition, that as such it is entirely subject to change during the will of Congress, and that all that is said as against the propriety of such change, while cogent

for the consideration of Congress, is out of place in court.

INDIAN TREATIES NOT CONTRACTS BECAUSE CONGRESS NOT AUTHORIZED TO CONTRACT.

The second and overwhelming reason why the Atoka Agreement and the supplemental agreement cannot be construed as contracts is because Congress has no power to contract with the Indian nations. The States of the Union are authorized to contract one with another with the consent of Congress, and the President with the consent of Congress may negotiate treaties or contracts with foreign nations, and the officers of the government are by law authorized to make contracts in its name with individuals, but the Indian nation neither stands in the shoes of an individual nor a foreign nation. If it be regarded from analogy with a foreign nation, the law is plainly settled that Congress may abrogate treaties at its will.

Thomas vs. Gay, 169 U. S., 271.

A treaty may supersede a prior act of Congress and an act of Congress may supersede a prior treaty.

Foster vs. Neilson, 2 Peters, 253, 314.

Taylor vs. Morton, 2 Curtis, 454.

Treaties with Indians within the United States stand in no better position than treaties with foreign nations.

The Cherokee Tobacco, 11 Wall., 616.

If the Indian is considered from the point of view of an individual and there is a question of Congress dealing with him, it must be remembered that the Fifth Amendment does not apply to Congress and it was decided by this court in Fleming, et al, vs. McCurtain, et al, 215 U. S., 56, that the Choctaw treaty of February 27,1830 did not create a trust in favor of the then existed members of the tribe and their descendants. In other words it was held that the ownership conveyed by the patents from Congress to the tribe was a tribal, not an individual, matter, and from this it would follow that the Atoka Agreement and the supplemental treaty, while made for the protection of the Indian, both individual and aggregate, yet were not made with individual Indians. The whole power of Congress in the subject flows from the provision vesting in Congress the exclusive authority to legislate for the Indians. This being a constitutional power we are met with two principles, first, that no legislature can abridge the power of a succeeding legislature, and, second, that Congress acting under its enumerated constitutional powers, cannot deprive itself of the power which in the constitution vests in it,—that the constitution vesting in Congress govern-

mental power over the Indian tribes, Congress cannot convert this into contractural rights. The power of Congress over the Indian and his land is plenary as long as its sovereignty is retained over them as a nation.

Appellants' second proposition is involved in what has been said in answer to their first.

The last clause of the Act of March 31, 1893, showing clearly that Congress did not mean to give up any part of its sovereignty over either the Indian or the Indian's land, it is clear that the Atoka Agreement and the supplemental agreement should be construed as in accordance with the idea of the retention by Congress of sovereign control over the Indian's land. That control was one of the conditions to be read into the treaties.

In the Marchie Tiger case, as in others, the court emphasizes the necessity of construing together the various acts and treaties enacted **in pari materia.**

SECTION 4 OF THE ACT OF MAY 27, 1908, MUST BE CONSTRUED TO BE APPLICABLE TO THE PLAINTIFF'S LAND.

The above result flows from the fact that the Act of April 26, 1906, in its nineteenth section specifically provides that lands upon which restrictions are re-

moved shall be subject to taxation. This section, therefore, being enacted **in pari materia** with Section 4 of the Act of May 27, 1908, clearly evinces the intent of Congress to abrogate the condition as to non-taxability which was inserted in the agreements solely for the protection of the Indian, and is a governmental, not a contractural matter. Furthermore, to hild that the fourth section of the Act of May 27, 1908, would not be, as claimed by the appellant, a deduction to be shown from consideration of the other laws on the subject but would be against the express unequivocal meaning of the words of the law itself as well as the express and equivocal meaning of the Act of April 26, 1906. It will be borne in mind that under the Act of May 27, 1908, the restrictions were not to be removed until sixty days from the passage of the Act, or until such time as the Secretary of the Interior would remove them. These sections must be considered in construing Section 4, providing that

> "all lands from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens, as though it was the property of other persons than the allottees of the Five Civilized Tribes."

The words "all lands from which restrictions have been removed" are but the equivalent of the nineteenth section of the Act of April 26, 1906, and, therefore, do not amount to a new enactment, but are a continuation of the existing law on the sub-

ject. The words "all lands from which restrictions shall be removed" must necessarily include the lands of plaintiff, because the restrictions on their lands were not removed,—could not have been until sixty days from the passage of the Act. It, therefore, seems to be a case that does not admit of two interpretations; it is unambiguous, unequivocal language, in harmony with other laws on the subject,, and for this reason precludes construction. There is no room for construction.

This court decided in De Yturbide vs. United States, 22 How., 290, that where the legislature makes a plain provision without making any exception, the courts can make none. In Maxwell vs. Moore, 22 How., 185, the court said that to do so would be legislation. See also Pyrie vs. Chicago Title & T. Co., 182 U., S. 438.

THE OKLAHOMA ORDINANCE IRREVOCABLE WAS INEFFECTIVE AS TO MATTERS WHICH CONGRESS PROVIDED AND HAD THE RIGHT TO PROVIDE.

The asserted statement is a necessary concomitant of the holding of this court in the Oklahoma capital case, Coyle vs. Smith, et al, decided at the last term, where it was held that the adoption of the ordinance irrevocable failed to establish as a part of the

law of the state and as binding law upon the state any provision inserted into the Enabling Act which was beyond the power of Congress to insert there. The authorities cited and followed by the court in the Oklahoma capital case reiterate the proposition stated in the 3d Howard, Pollard vs. Hagan's Lessee, and Permoli vs. First Municipality, 3 Howard, 609, that the power of Congress in dealing with a state, arising as it does from the constitutional grant, is not, as it were, a matter of contract, and can neither be amplified nor diminished by agreement. A consideration of the ordinance can, therefore, be set aside. The question is purely, what has Congress done, and what power has Congress had to do what it has done?

The position of the state is stated with perfect accuracy by the Supreme Court of the State. The State made no contract. It was not necessary for it to do so. The state would necessarily be controlled by the valid exercise of power by Congress. It appears to us that the following propositions are decisive of this case.

POWER OF CONGRESS PLENARY.

Congress has plenary power over the property of the Indians and of the Indian tribes, and has the right to amend the Atoka Agreement and the supple-

mental agreement, not only by the Act of May 27, 1908, but by the Act of April 26, 1906, as well.

Lone Wolf vs. Hitchcock, 187 U. S., 553; Stevens, et al, vs. Cherokee Nation, 174 U. S., 445; Marchie Tiger vs. Western Investment Company, et al, Last Term.

THE STATE MADE NO CONTRACT.

The State of Oklahoma, neither by its constitution nor by its ordinance irrevocable made a contract as to tax exemption. To this effect see Gleason vs. Wood., 114 Pac., 703, where the court used this language:

> "On Oklahoma coming in as a state, it yielded the right to the federal government to legislate as to the property,, of either absolving it from taxation or, by removing the exemption, thereby bringing it within the operation of the general taxing system of the state. When, therefore, Congress acted and the exemption was removed, the state's power to tax by operation of law immediately attached. This, it occurs to us, is the extent, force, and effect of the provisions of the enabling act and the Constitution. The state entered into no contract with the Indian tribes or the members thereof. It made no agreement, and it received naught from them as a consideration, for the relief which they here demand. Its sole contract in reference to these matters

> was with Congress, wherein it agreed that it would recognize and respect its legislation. So long as Congress maintained the laws under which these lands were exempt, the state under this agrement was required to recognize the same; but when Congress repealed them, and rendered the lands the same as those of all other citizens of the state, there was no broken pledge on its part when it enforced the same laws with reference to the lands that it did on those of all others."

The state decision as to the existence of a contract is binding upon this court (Wailes vs. Smith, 157 U. S., 271), and also the state decision as to the meaning of the constitution is binding upon this court, Moffit, et al, vs. Kelly, 218 U. S., 400, holding that the inheritance law of California did not vitiate the right of the wife in the others property. The ordinance irrevocable has nothing to do with this matter (Coyle vs. Smith, et al, Last Term). As far as the state is concerned the existence of its contract is not a question reviewable in this court. A standard authority has said:

> "Where the highest court of a state having jurisdiction of a subject decides against the plaintiff in rendering a judgment, and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment, the writ of error must be dismissed without considering the federal question."

Jurisdiction and Procedure of the United States Supreme Court, Taylor, Section 240.

The state court having decided that the state made no contract, that ground was broad enough to rest the judgment upon without a consideration of whether the contract was broken.

IF A CONTRACT BETWEEN A STATE AND THE UNITED STATES, THE LATTER ONLY CAN COMPLAIN OF ITS BREACH.

It is very clear that if there was a contract it was only between the United States and the State. Nothing is pleaded to show any contract between the state and the plaintiffs in error, therefore, if there has been a breach of the alleged contract, the parties to that contract are the only persons who can complain of the breach.

Walsh vs. Columbus, Hocking Valley and Athens Railroad Co., 176 U. S., 469.

INDIVIDUAL INDIANS CANNOT COMPLAIN OF BREACH.

Further, if there was a contract, it was made between the United States and the Indian nations, and

in no event could the plaintiffs substitute themselves in the shoes, with the rights of the Choctaw Indians. The grant of land to the Choctaw Nation was to it as a nation, in which no individuals could have individual rights.

Fleming vs. McCurtain, 215 U. S., 56.

Each of these points appears decisive of this case. We, therefore, respectfully urge that the appeal should be dismissed and the decision of the lower court affirmed.

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For Defendant in Error.